TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 668.

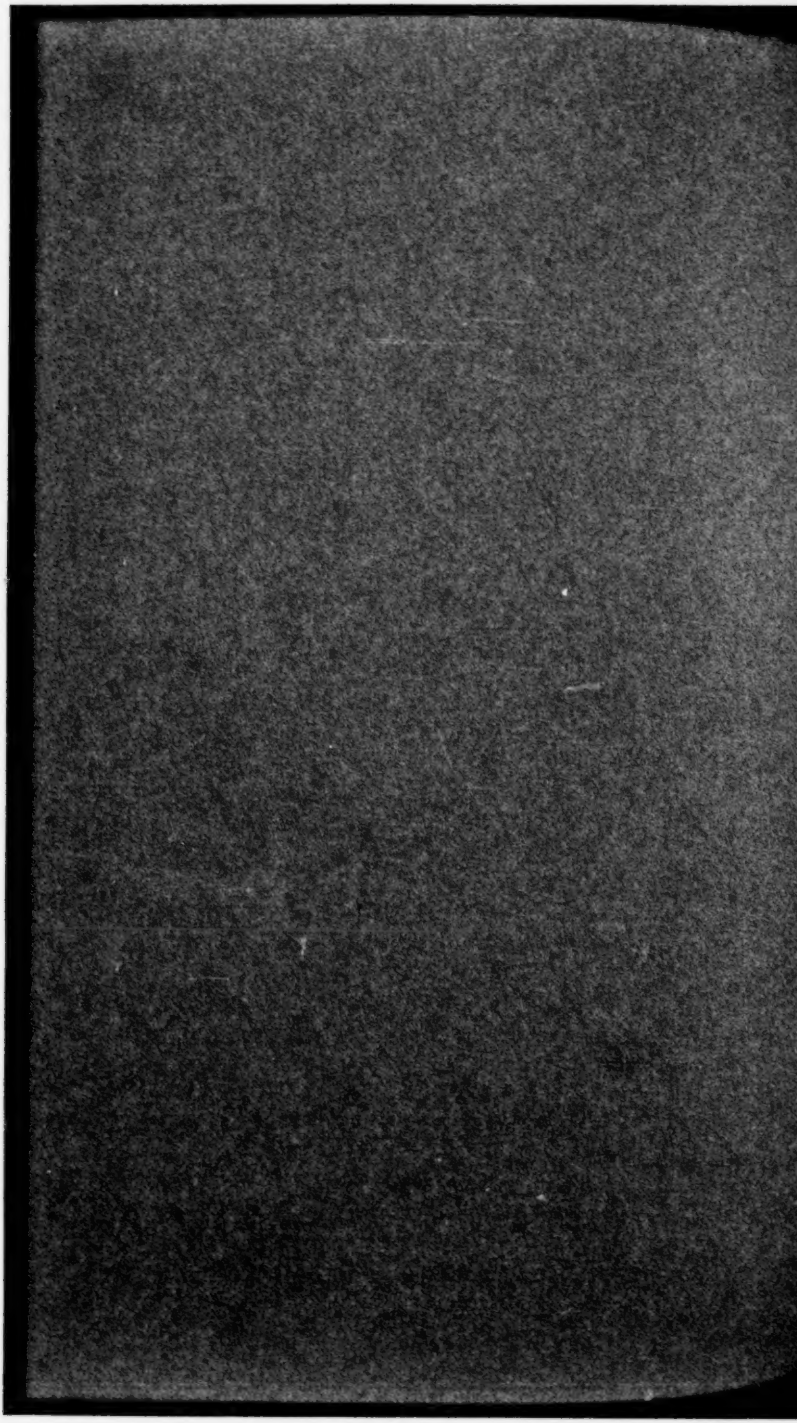
THE CITY OF NEW YORK, APPELLANT,

vs.

NEW YORK TELEPHONE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 26, 1903.



(29,138)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 588.

THE CITY OF NEW YORK, APPELLANT,

vs.

NEW YORK TELEPHONE COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST, WILLIAM R. POOLEY, CHARLES VAN Voorhis, Oliver C. Semple, Charles G. Blakeslee, the Persons Constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel to said Public Service Commission, and Charles D. Newton, Attorney General of the State of New York, Defendants.

Bill of Complaint and Affidavits on Application for Interlocutory Injunction.

Charles T. Russell,
Stetson, Jennings and Russell,
Solicitors for Plaintiff.

John L. Swayze,
John W. Davis,
Of Counsel.

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a1 District Court of the United States, Southern District o New York.

In Equity.

No. 23–252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST, WILLIAM R. POOLEY, CHARLES VA Voorhis, Oliver C. Semple, Charles G. Blakeslee, the Persons Co stituting the Public Service Commission of the State of New York Ledyard P. Hale, Counsel to said Public Service Commission, an Charles D. Newton, Attorney General of the State of New York Defendants.

Bill of Complaint.

To the Judges of the District Court for the Southern District o New York:

The New York Telephone Company, plaintiff, brings this its bil of complaint against the defendants, William A Prendergast, Wil liam R. Pooley, Charles Van Voorhis, Oliver C. Semple, and Charle G. Blakeslee, the persons constituting the Public Service Commis sion of the State of New York; Ledyard P. Hale, Counsel to sai Public Service Commission; and Charles D. Newton, Attorney Gen eral of the State of New York, and for its cause of action alleges:

a2 I.

The plaintiff, the New York Telephone Company, is a corpora tion duly created and existing pursuant to the laws of the State o New York, and during all the times herein referred to has owne and operated a telephone system in and generally throughout th

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State of New York, and in parts of the states of New Jersey and Connecticut, furnishing to the public telephone exchange service, and both intrastate and interstate telephone toll service.

II.

The defendants, William A. Prendergast, William R. Pooley, Charles Van Voorhis, Oliver C. Semple, and Charles G. Blakeslee, are the persons constituting the Public Service Commission of the State of New York, which is an administrative body duly created by the statutes of said state, and they will hereafter be referred to collectively as the Public Service Commission; the defendant Ledyard P. Hale is counsel to said Public Service Commission; and the defendant Charles D. Newton is the Attorney General of the State of New York. The said defendants are citizens and residents of the State of New York. The defendant William A. Prendergast is a citizen and resident of the Eastern District of New York; the defendants William R. Pooley, Charles Van Voorhis, and Charles D. Newton are citizens and residents of the Western District of New York; the defendants Charles G. Blakeslee and Ledyard P. Hale are citizens and residents of the Northern District of New York; and the defendant Oliver C. Semple is a citizen and resident of the Southern District of New York.

3 III.

This suit is of a civil nature in equity and is brought for the purpose of enjoining the enforcement of two certain orders of said Public Service Commission, dated March 3rd, 1922, prescribing the maximum rates for telephone service to be charged by plaintiff on and after April 1st, 1922, within the State of New York, as more particularly stated hereinafter, and arises under the Constitution and laws of the United States, in that, as plaintiff avers, the rates prescribed in said orders are confiscatory of plaintiff's property used or useful in furnishing said telephone service to the public, and said orders therefore seek to deprive plaintiff of its property without due process of law and deny the plaintiff the equal protection of the laws in violation of its rights under the Fourteenth Amendment to the Constitution of the United States and are therefore null and void.

The amount in controversy in this suit exceeds the sum or value of Three Thousand Dollars ($3,000), exclusive of interest and costs.

IV.

The Public Service Commission, and its predecessor exercising like powers, acting under the authority vested in them by the Public Service Commissions Laws of the State of New York, have heretofore made the following orders prescribing the maximum rates for telephone exchange service to be charged by plaintiff in The City of New York:

An order dated March 30, 1915, effective July 1, 1915, establish-

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ing such maximum rates for the period of three years and thereaft
until the further order of the Commission. A copy of said order
hereto attached, marked "Exhibit A." The rates prescrib
*a*4 by said order were put into effect by plaintiff in The Ci
of New York on July 1, 1915, and became and remained t
lawful rates until October 1, 1919;

An order dated September 16, 1919, effective October 1, 191
modifying said previous order of March 30, 1915, by reducing
8% the maximum rates therein prescribed, to remain in effect fo
period of one year, and thereafter until the further order of t
Commission. A copy of said order is hereto attached, marked "E
hibit B." In compliance with this order the plaintiff reduced
said rates in The City of New York by 8% and the maximum ra
so prescribed became and remained the lawful rates until April
1921;

An order dated March 17, 1921, effective April 1, 1921, where
the then Public Service Commission consented to an increase in t
maximum rates, and further modified the said order of March
1915, by eliminating the 8% reduction provided for in the order
September 16, 1919, and by the addition after such elimination
20% to all of the rates determined and fixed by said order of Ma
30, 1915. A copy of said order is hereto attached, marked "Exhi
C." Plaintiff put said rates into effect in the City of New York
April 1, 1921, and they became and remained the lawful rates un
July 1, 1921;

In and by said order of March 17, 1921, said Public Service Co
mission found that plaintiff had been obliged to make substant
increases in the salaries and wages of its employees in order to rest
and preserve the effectiveness of the service; that these increases h
been made with the approval and at the suggestion of the Comm
sion; and that, because of such increases and certain other chang
conditions adding to the cost of operation, plaintiff had for so
time been unable to earn its operating expenses under the maximu
rates fixed by said order of September 16, 1919, and wou
*a*5 suffer serious damage if these rates were continued in for

An order dated June 16, 1921, effective July 1, 19
further modifying the maximum rates prescribed by the order
March 30, 1915, by eliminating the addition of 20% provided
in the order of March 17, 1921, and substituting an addition of 10
only. A copy of said order is hereto attached, marked "Exhi
D." Plaintiff put said rates into effect in The City of New York
July 1, 1921, and they became and have remained the lawful ra
up to this time;

An order dated March 3, 1922, effective April 1, 1922, which
one of the two orders herein complained of, further modifying t
maximum rates prescribed by said order of March 30, 1915, by eli
inating the addition of 10% provided for in the order of June
1921, and substituting an addition of 5% only. A copy of s
order is hereto attached, marked "Exhibit E."

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V.

In the cities, towns and villages in the State of New York outside the City of New York the rates for telephone exchange service w being charged by plaintiff are, with certain minor exceptions, es which were duly filed by plaintiff in the office of the Public rvice Commission, as provided by law, and which became effective September 1, 1920, and said rates, with the minor exceptions ove referred to, have been continuously in effect since September 1920, up to this time. Referring specifically to the City of Buf-lo, the rates so filed and put into effect on September 1st, 1920, re continued in effect only until November 1, 1921, when slightly wer rates were prescribed by an order of the Public Service Commission dated October 27, 1921, and these lower rates have been in effect in the City of Buffalo since said order became effective and up to this time. The rates now in effect and ferred to in this paragraph, including those for the City of Buffalo, e higher than the rates in effect for a considerable period of time ior to September 1, 1920.

By its order dated March 3, 1922, effective April 1, 1922, a copy which is hereto attached, marked Exhibit F, which is one of the o orders herein complained of, the Public Service Commission has escribed the rates for telephone service in the State of New York.

VI.

That the plaintiff's existing rates for intrastate toll service within e State of New York have been continuously in effect since prior January 1, 1919. The said orders of March 3, 1922, Exhibits E d F hereto, made certain specific reductions in the rates to be arged by the plaintiff for its telephone exchange service in the ate of New York, and subject to these reductions continued in ect as the only lawful rates which the plaintiff could charge for telephone service within the State of New York the rates that re in existence at the date of the said orders, including the toll tes above mentioned.

VII.

The cost to plaintiff of its property in the State of New York now ing used or useful in furnishing its intrastate telephone service the public and exclusively devoted to the rendition of that service s, as of January 31st, 1922, the sum of $247,435,923, and is now somewhat in excess of said amount on account of net additions made to the said property in the meantime. The present cost of reproduction of said property, as it existed on nuary 31st, 1922, is the sum of $373,000,000. The present fair d reasonable value of said property is in excess of the sum of 23,000,000.

The foregoing statements as to the cost to plaintiff of said property clude nothing on account of the item of franchises or the item

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known as going concern value, but said latter item has been co
sidered in determining the present cost of reproduction and prese
fair and reasonable value of said property.

VIII.

Plaintiff's telephone business in the State of New York has be
conducted efficiently and economically during all the times here
referred to.

Plaintiff's net earnings derived from said intrastate telephone bu
ness within the State of New York, stated in rate per cent ann
return upon the cost of the property used or useful in furnishi
said service, and exclusively devoted to the rendition thereof, duri
each of the periods stated, have been as follows:

For the year 1919	5.7
For the year 1920	1.3
For the 1st quarter of the year 1921	1.2
For the 2nd quarter of the year 1921	6.0
For the last half of the year 1921	3.4
For the year 1921	3.5
For the month of January, 1922	3.5

At all of the times aforesaid, the fair and reasonable value of s
property has been an amount substantially in excess of its cost.

a8

IX.

The fair annual return which the plaintiff is entitled to earn un
rates imposed upon it by public authority is an amount equal to
less than 8% of the fair and reasonable value of its property used
useful in the rendition of the service covered by the rates in quest

X.

That the rates of the plaintiff in the State of New York establis
and enforced as herein set out, during the years 1919, 1920, 1
and the month of January, 1922, were not compensatory and w
less than just and reasonable rates; that the reductions made by
said orders, Exhibits E and F hereto, were in exchange rates, wh
rates afford to the plaintiff more than 80% of its total revenue f
its said telephone business.

That the amounts by which the net revenues derived by the c
pany from its intrastate telephone business within the State of
York were less than 8% of the cost of the property used or useful
and exclusively devoted to, the rendition of plaintiff's intrastate
phone service within the said State were, for the year 1919, $4,0
182; for the year 1920, $13,257,099; for the first quarter of the
1921 (upon an annual basis), $14,675,096; for the second qua
of the year 1921 (annual basis), $4,517,900; and for the last
of the year 1921 (annual basis), $10,934,022; and for the mo
of January, 1922 (annual basis), $11,034,145.

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XI.

That the rates prescribed by the said orders here complained of, being Exhibits E and F hereto attached, do not and will not afford the plaintiff a fair return upon the fair and reasonable value
a9 at the time of use of its property, used or useful in, and exclusively devoted to, the service on account of which the said rates are established but are confiscatory in effect; the orders aforesaid and each of them are, therefore, null and void and the same, and each of them, if enforced would deprive plaintiff of its property without due process of law and deny to plaintiff the equal protection of the laws in violation of its rights under the provisions of the Fourteenth Amendment to the Constitution of the United States.

If said orders complained of are enforced and plaintiff is compelled to charge the rates therein prescribed and if plaintiff shall practice all reasonable economies consistent with adequate and efficient service to the public, the financial results will be as follows: Plaintiff will be prevented from earning any return in excess of 2.56% per annum upon the cost of its said telephone property in the State of New York and from earning any return in excess of 1.96% per annum upon the fair and reasonable value of said property.

XII.

The said order, Exhibit E hereto attached, in terms requires the plaintiff to file with the said Public Service Commission a bond or undertaking, with the American Telephone and Telegraph Company as surety, to be approved as to form and manner of execution by said Commission, providing for the repayment to each and every subscriber of all sums paid for service on and after April 1, 1922, in excess of such rates or charges as may be finally fixed by said Commission therefor.

That said provision of the said order is void because in excess of the authority conferred by law upon the said commission and, further, in that it deprives the plaintiff of an opportunity to have
a10 a judicial determination as to the legality of the rates finally prescribed by the commission by requiring the plaintiff to make such repayments, whether said rates be finally sustained as legal or not; and said order therefore on this account seeks to deprive the plaintiff of its property without due process of law and to deny to the plaintiff the equal protection of the laws under the fourteenth amendment of the constitution of the United States, and is for these reasons null and void.

XIII.

Unless the defendants are restrained and enjoined as herein prayed, they will, as plaintiff believes and so alleges, attempt to compel plaintiff to comply with said orders of March 3, 1922, and to enforce the penalties prescribed by the laws of the State of New

York, and plaintiff, its directors, officers, agents nad employees will be deterred and prevented by the threat of said penalties from charging lawful rates on and after April 1, 1922, and from charging any rates other than the rates prescribed by said orders, and thereby plaintiff will be forced to submit to the confiscation of its property without due process of law and in violation of its rights under the Constitution of the United States as hereinbefore alleged and will be subjected to great and irreparable loss and damage.

Unless the defendants are restrained and enjoined as herein prayed, plaintiff's subscribers will, as plaintiff believe and so alleges, be induced and caused to resist and refuse payment of any rates other than those prescribed in said orders. The present number of plaintiff's subscribers in the State of New York is more than 787,000, and the present average monthly bill rendered to them on account of exchange service is less than $8. Because of the nature of
a11 the business of the plaintiff and the fact that the amounts due monthly from its subscribers for telephone exchange service are generally small, it is impracticable for plaintiff to enforce collection thereof by actions at law. Plaintiff has no practical way to enforce collection of its rates and charges except by cutting off and refusing service for default in payment of its bills rendered monthly therefor, and its subscribers will, as plaintiff believes and so alleges, institute large numbers of suits in various jurisdictions throughout the State of New York to restrain plaintiff from cutting off and denying service for such nonpayment of bills, and for damages, and plaintiff will thereby be subjected to an endless multiplicity of suits.

That the issues which would be presented in each such suit are presented, and should and will be decided, in this action.

Plaintiff has no plain, speedy or adequate remedy at law.

Wherefore plaintiff prays:

1st. That the rates prescribed in said orders of March 3, 1922 (Exhibit E and Exhibit F, attached hereto), be decreed to be confiscatory, in violation of the Constitution of the United States, and the orders imposing the same to be void;

2nd. That defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents and employees to observe or put in force on April 1, 1922, or to observe or keep in force thereafter, the rates for telephone service prescribed by said orders of March 3, 1922, or either of said orders;

3rd. That the defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from
a12 taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy for disregarding the rates prescribed by said orders or either of them;

4th. That the plaintiff have such other and further relief as may be just and equitable in the premises.

May it please your Honors to grant unto the plaintiff a writ of subpœna of the United States of America issuing out of and under the seal of this Honorable Court, directed to the said defendants, William A. Prendergast, William R. Pooley, Charles Van Voorhis, Oliver C. Semple, and Charles G. Blakeslee, the persons constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel to said Public Service Commission; and Charles D. Newton, Attorney General of the State of New York, commanding them and each of them on a day certain to be named therein, and under a certain penalty, to be and appear before this Honorable Court then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises and to perform and abide by such orders, direction or decree as may be made against them in the premises, and that pending the final hearing of this cause a temporary restraining order may be issued as above prayed.

And the plaintiff will ever pray.

NEW YORK TELEPHONE COMPANY,
By CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Its Solicitors.

JOHN L. SWAYZE,
JOHN W. DAVIS,
Of Counsel for Plaintiff.

a13 UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

On this 29th day of March, 1922, before me personally appeared Howard F. Thurber, who, being by me first duly sworn, deposes and says that he is President of the New York Telephone Company, plaintiff herein; that he has read the foregoing Bill of Complaint by him subscribed and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

H. F. THURBER.

Subscribed and sworn to before me this 29th day of March, 1922.
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a14

EXHIBIT A.

State of New York,

Public Service Commission,

Second District.

At a Session of the Public Service Commission, Second District, Held in the City of Albany on the 30th Day of March, 1915.

Present:

Seymour Van Santvoord,
Chairman;
Martin S. Decker,
Devoe P. Hodson,
Wm. Temple Emmet,
Frank Irvine,
Commissioners.

In the Matter of Investigation of Rates and Charges for Service Rendered by THE NEW YORK TELEPHONE COMPANY Within the City of New York (Case No. 4089).

This case having been heard upon testimony for complainants, and testimony as directed by the Commission in relation to the cost and the reproduction cost of respondent's property devoted to public use within the City of New York; and the Commission having heretofore stated, upon the record so made, that its estimate of the value of respondent's said property for rate making purposes in this case and at this time is the sum of $82,000,000, to
a15 which is to be added the cost of property improvements between June 30, 1914, and December 31, 1914, amounting to $1,796,685; that the respondent is entitled on present consideration to a return of 8 per cent upon such property value; that there shall be allowed as reduction from telephone operating revenue for reduced rates now to be ordered by the Commission the sum of $3,000,000, and that the said rate of return equal to 8 per cent is allowed upon consideration that respondent's operating income from its said property in New York city for the year ended December 31, 1914, after deducting all proper expenses, taxes, rents, and other proper charges, shall be taken as at least $10,027,445.33. Said rate of return is also based upon consideration of respondent's 8 per cent dividends and surplus account, the fact that New York city by reason of its large and dense population constitutes respondent's most profitable field of operation, and the further fact that respondent's long distance toll service as maintained has a special value to subscribers and the public generally in New York city. And respondent having accepted the foregoing valuation, rate of return,

and reduction of revenue, by statement of its counsel in open hearing, and having filed with the Commission a proposed schedule of reduced rates; and the Commission having thereupon taken the record of the case as so made under advisement, and the Commission having determined that said proposed schedule of rates should be amended by changes causing further reductions in favor of the public; and the Commission having estimated, after due and careful consideration, that the said proposed schedule of rates as so amended will cause a present reduction of revenue to respondent of $2,943,000, thus leaving a balance of $57,000 to cover omissions and errors, and making a total present reduction of $3,000,000, over and above the 10 per cent reduction already made by respondent
a16 during the pendency of this proceeding estimated by respondent at a sum over $2,000,000. The Commission does now hereby prescribe as follows:

Zones.

It is Ordered: 1. The message rates of the respondent shall be established as for ten (10) Zones, described as follows, to wit:

Zone 1. Manhattan below 110th Street west and 103rd Street east; also Blackwells, Ellis, Liberty, and Governors Islands.

Zone 2. Remainder of Manhattan Island and the lower Bronx, including the central office districts of Harlem, Cathedral, Morningside, Audubon, Fordham, Tremont, Intervale, Marble, and Melrose; also Randalls and Wards Islands.

Zone 3. Remainder of the Bronx, including the central office districts of Westchester, City Island, Williamsbridge, Woodlawn, and Kingsbridge.

Zone 4. Upper Brooklyn, including the central office districts of Greenpoint, Stagg, Williamsburg, Bushwick, Main, Prospect, Bedford, Decatur, East New York, Cypress, Hamilton, South, Sunset, Borough Park, and Flatbush; Astoria and Hunters Point.

Zone 5. Lower Brooklyn, including the central office districts of Bay Ridge, Bath Beach, Midwood, Coney Island, and Canarsie; also Barren Island.

Zone 6. The central office districts of Bayside, Newtown, Flushing, and Forest Hills.

Zone 7. The central office districts of Richmond Hill, Jamaica, Hollis, and Springfield.

Zone 8. The central office districts of Far Rockaway and Hammels.

a17 Zone 9. The central office districts of West New Brighton, Tompkinsville, and New Dorp in the Borough of Richmond.

Zone 10. The central office district of Tottenville in the Borough of Richmond.

Subscribers' Individual Station Rates.

Zone 1.

2. The schedule of maximum rates for telephone service to subscribers' individual stations within Zone 1, with the local service area therefor, shall be as follows, to wit:

	Business and residence.		Residence only.		
Local messages.	Individual line.	Rate of advance.	2-party line.	Rate of advance.	Excess rate.
720	....	....	$36	5c.	5c.
800	$40	5c.	....	....	5c.
840	42	5c.	42	5c.	5c.
1020	51	5c.	51	5c.	5c.
1200	60	4c.	....	....	5c.
1500	72	4c.	....	....	5c.
1800	84	4c.	....	....	5c.
2100	96	4c.	....	....	5c.
2400	108	3c.	....	....	4c.
2700	117	3c.	....	....	4c.
3000	126	3c.	....	....	4c.
3300	135	3c.	....	....	4c.
3600	144	2½c.	....	....	3c.
3900	151.50	2½c.	....	....	3c.
4200	159	2½c.	....	....	3c.
4500	166.50	2½c.	....	....	3c.
4800	174	2½c.	....	....	3c.

Extension stations, $6 each. Auxiliary line and station, $27.

Additional local messages contracted for in advance in lots of 300, 2½ cents each.

Additional local messages not contracted for in advance, 3 cents each.

The local service area for Zone 1 shall include Zones 1, 2, 3, 4, and 5.

a18

Zone 2.

3. The schedule of maximum rates for telephone service to subscribers' individual stations within Zone 2, with the local service area therefor, shall be as follows, to wit:

	Business and residence.		Residence only.		Residence only.		
Local messages.	Individual annual rate.	Rate of advance.	2-party annual rate.	Rate of advance.	4-party annual rate.	Rate of advance.	Excess rate.
600	....	....	....	....	$30	5c.	5c.
720	....	....	$36	5c.	36	5c.	5c.
800	$40	5c.	....	....	....	....	5c.
840	42	5c.	42	5c.	42	5c.	5c.
1020	51	5c.	51	5c.	51	5c.	5c.
1200	60	4c.	....	....	....	....	5c.
1500	72	4c.	....	....	....	....	5c.
1800	84	4c.	....	....	....	....	5c.
2100	96	4c.	....	....	....	....	5c.
2400	108	3c.	....	....	....	....	4c.
2700	117	3c.	....	....	....	....	4c.
3000	126	3c.	....	....	....	....	4c.
3300	135	3c.	....	....	....	....	4c.
3600	144	2½c.	....	....	....	....	3c.
3900	151.50	2½c.	....	....	....	....	3c.
4200	159	2½c.	....	....	....	....	3c.
4500	166.50	2½c.	....	....	....	....	3c.
4800	174	2½c.	....	....	....	....	3c.

Extension stations, $6 each. Auxiliary line and station, $27.

Additional local messages contracted for in advance in lots of 300, 2½ cents each.

Additional local messages not contracted for in advance, 3 cents each.

The local service area for Zone 2 shall include Zones 1, 2, 3, and 4.

a19 Zones 4 and 5.

4. The schedule of maximum rates for telephone service to subscribers' individual stations within Zones 4 and 5, with the local service areas therefor, shall be as follows, to wit:

	Business and residence.		Residence only.		Residence only.		
Local messages.	Individual line.	Rate of advance.	2-party line.	Rate of advance.	4-party line.	Rate of advance.	Excess rate.
600	....	....	....	....	$30	5c.	5c.
720	....	....	$36	5c.	36	5c.	5c.
800	$40	5c.	....	....	....	....	5c.
840	42	5c.	42	5c.	42	5c.	5c.
1020	51	5c.	51	5c.	51	5c.	5c.
1200	60	4c.	....	....	....	....	5c.
1500	72	4c.	....	....	....	....	5c.
1800	84	4c.	....	....	....	....	5c.
2100	96	4c.	....	....	....	....	5c.
2400	108	3c.	....	....	....	....	4c.
2700	117	3c.	....	....	....	....	4c.
3000	126	3c.	....	....	....	....	4c.
3300	135	3c.	....	....	....	....	4c.
3600	144	2½c.	....	....	....	....	3c.
3900	151.50	2½c.	....	....	....	....	3c.
4200	159	2½c.	....	....	....	....	3c.
4500	166.50	2½c.	....	....	....	....	3c.
4800	174	2½c.	....	....	....	....	3c.

Extension stations, $6 each. Auxiliary line and station, $27.

Additional local messages contracted for in advance in lots of 300, 2½ cents each.

Additional local messages not contracted for in advance, 3 cents each.

The local service area for Zone 4 shall include Zones 1, 2, 4, 5, 6, and 7.

The local service area for Zone 5 shall include Zones 1, 4, 5, 6, 7, and 8

a20 Zones 3, 6, 7, and 8.

5. The schedule of maximum rates for telephone service to subscribers' individual stations within Zones 3, 6, 7, and 8, with the local service areas therefor, shall be as follows, to wit:

Local messages.	Business and residence. Individual line.	Rate of advance.	Excess rate.
720	$36	5c.	5c.
900	45	4c.	5c.
1,200	57	4c.	5c.
1,500	69	4c.	5c.
1,800	81	4c.	5c.
2,100	93	3c.	4c.
2,400	102	3c.	4c.
2,700	111	3c.	4c.
3,000	120	2–1/2c.	3c.
3,300	127.50	2–1/2c.	3c.
3,600	135	2–1/2c.	3c.
3,900	142.50	2–1/2c.	3c.
4,200	150	2–1/2c.	3c.
4,500	157.50	2–1/2c.	3c.
4,800	165	2–1/2c.	3c.

Extension stations, $6 each. Auxiliary line and station, $27.

Additional local messages contracted for in advance in lots of 300, 2½ cents each.

Additional local messages not contracted for in advance, 3 cents each.

The local service area for Zone 3 shall include Zones 1, 2, and 3.

The local service area for Zone 6 shall include Zones 4, 5, 6, and 7.

The local service area for Zone 7 shall include Zones 4, 5, 6, 7, and 8.

The local service area for Zone 8 shall include Zones 5, 7, and 8.

a21 Zones 9 and 10.

6. The schedule of maximum rates for telephone service to s
scribers' individual stations within Zones 9 and 10, with the lo
service areas therefor, shall be as follows, to wit:

Local messages.	Business and residence. Individual line.	Rate of advance.	Exc rat
720	$36	5c.	5c
900	45	2–1/2c.	3c
1,200	52.50	2–1/2c.	3c
1,500	60	2–1/2c.	3c
1,800	67.50	2–1/2c.	3c
2,100	75	2–1/2c.	3c
2,400	82.50	2–1/2c.	3c
2,700	90	2–1/2c.	3c
3,000	97.50	2–1/2c.	3c
3,300	105	2–1/2c.	3c
3,600	112.50	2–1/2c.	3c

Extension stations, $6 each. Auxiliary line and station, $24
Additional local messages contracted for in advance in lots of 3
2–1/2 cents each.
Additional local messages not contracted for in advance, 3 ce
each.
The local service area shall include Zones 9 and 10.

Private Branch Exchange Rates.

Zones 1, 2, 3, 4, 5, 6, 7, and 8.

7. The schedule of maximum rates for subscribers' private bran
exchange telephone service within Zones 1, 2, 3, 4, 5, 6, 7, and 8, w
the same local service areas as herein provided for said Zones un
the individual station message schedules respectively, shall be
follows, to wit:

Minimum equipment consisting of monitor switchboard (limited to 7 stations and 3 trunks) 2 stations, one trunk, and 2,400 local messages per annum.....	$126.00
Same as above, with cord switchboard and operating set (limited to 30 station drops) in place of monitor board	132.00

a22 Stations in connection with above switchboards:

First 10, each	6.00
Second 10, each	4.80
Above 20, each	3.60
Additional working drops in switchboards having more than 30 station drops, each station drop	1.20
Additional trunks, each	24.00
Additional local messages when contracted for in advance in blocks of 300, each	.02½
Additional local messages not contracted for in advance, each	.03

Zones 9 and 10.

8. The schedule of maximum rates for subscribers' private branch exchange telephone service within Zones 9 and 10, with local service area including Zones 9 and 10, shall be as follows, to wit:

Minimum equipment consisting of monitor switchboard (limited to 7 stations and 3 trunks) 2 stations, one trunk, and 2,400 local messages per annum	$120.00
Same as above, with cord switchboard and operating set (limited to 30 station drops) in place of monitor board	126.00

Stations in connection with above switchboards:

First 10, each	6.00
Second 10, each	4.80
Above 20, each	3.60
Additional working drops in switchboards having more than 30 station drops, each station drop	1.20
Additional trunks, each	24.00
Additional local messages when contracted for in advance in blocks of 300, each	.02½
Additional local messages not contracted for in advance, each	.03

a23 *Toll Rates.*

9. The schedule of maximum toll rates between the Zones be those shown in the following table, to wit:

Subscribers' Toll Rates.

Zones.	1	2	3	4	5	6	7	8	9
1	L								
2	L	L							
3	L	L	L						
4	L	L	5c.	L					
5	L	5c.	10c.	L	L				
6	5c.	5c.	5c.	L	L	L			
7	5c.	5c.	10c.	L	L	L	L		
8	5c.	10c.	10c.	5c.	L	5c.	L	L	
9	5c.	10c.	10c.	5c.	5c.	10c.	10c.	10c.	L
10	10c.	10c.	10c.	10c.	10c.	10c.	10c.	10c.	L

"L" indicates "local" for message rate subscribers.

Where the subscriber's toll rate is L, the Public Telephone toll rate sh 5 cents.

Where the subscriber's toll rate is 5 cents, the maximum Public Tele toll rate shall be 10 cents.

Where the subscriber's toll rate is 10 cents, the maximum Public Tele toll rate shall be 10 cents.

10. All flat rates and flat rate service within the city of New now provided for in respondent's tariffs on file with the Commi as applying to said city of New York shall remain in force effect. The toll rate between any such flat rate local area and points within New York city shall not exceed 5 cents, except w the subscriber's toll rate for message service is 10 cents, and in case the 10 cent toll rate will apply.

11. Except as changed by this order, respondent's present schedule regulations on file with the Commission applying t services affected by this order are continued in force.

12. The rates for telephone service herein specified shall be effective July 1, 1915, and shall remain in force for a period of years and thereafter until the further order of the Commission.

a24 13. The respondent, New York Telephone Company, file with this Commission its notice concerning acceptan this order, under section 23 of the Public Service Commissions within ten days after receipt of a copy hereof.

By the Commission.

(Signed) FRANK H. MOTT,
[SEAL.] *Secreta*

EXHIBIT B.

State of New York,
Public Service Commission,
Second District.

At a Session of the Public Service Commission, Second District, Held in the City of Albany on the 16th Day of September, 1919.

Present:

Charles B. Hill, Chairman;
Frank Irvine,
John A. Barhite,
Thomas F. Fennell,
Joseph A. Kellogg,
Commissioners.

In the Matter of Investigation of Rates and Charges for Service Rendered by THE NEW YORK TELEPHONE COMPANY Within the City of New York [Case No. 6974].

Heretofore and on the 30th day of March, 1915, this Commission, by order duly made on that day, prescribed a schedule or a25 schedules of exchange rates and subscribers' toll rates, between zones, all within the city of New York, to become effective July 1, 1915, and to remain in force for a period of three years and until the further order of the Commission. Said order was duly accepted in writing by the company, and the rates therein ordered and prescribed were made effective July 1, 1915, as therein directed, and ever since have been and still are in force and effect.

On August 1, 1919, the Commission took under consideration the justness and reasonableness of the rates so prescribed and in effect, and by resolution duly adopted on the 20th day of August, 1919, of its own motion initiated an investigation as to the justness and reasonableness of the exchange rates and subscribers' toll rates between zones of said company for its telephone service within said city of New York, and gave public hearings thereon at its office in the city of New York on the 28th day of August and the 4th day of September, 1919, at which the company was represented by counsel; and the City of New York was represented by Mr. William P. Burr, Corporation Counsel, and Mr. Robert L. Stanton, Assistant Corporation Counsel; and appearances were also made by Mr. S. C. Mead, Secretary, for the Merchants' Association of New York; Hon. James A. Foley for himself, Hon. Milo R. Maltbie for the New York World; Mr. M. H. Winkler for himself; Mr. Stewart Brown for the United Real Estate Owners' Association; and Messrs. Mark Goldberg and Edward F. Healy.

At the final hearing, said New York Telephone Company proposed that the investigation be deferred until on or after the 1st

day of October, 1920, upon condition that an order should be
tered, with the company's consent, without further investigatio
inquiry at this time, reducing certain of the rates no
a26 effect, such reduced rates to become effective as of Octob
1919, and to remain in effect for the period of one year f
that date, and thereafter until the further order of the Commiss
and after due deliberation had, the Commission being of opi
that it is to the best interests of the telephone subscribers affe
and of the company that said proposition be accepted, now, th
fore, the Commission does hereby prescribe as follows:

It is Ordered: That the said order of March 30, 1915, be an
hereby modified as follows:

1. The rates and charges specified in ordering clauses 1 to 8
clusive are reduced 8 per cent, to be deducted from monthly
to subscribers.

2. In addition to the foregoing, the rates and charges now or
for (*a*) Flat rate services; (*b*) Intercommunicating systems;
Mileage (limited to extension, tie, foreign, submarine, and excha
mileage within the local service area); (*d*) Miscellaneous (tha
service stations, listings, supplemental equipment, special eq
ment, semi-public telephones, and any other rates and charges
revenue from which is credited to Account 500 as provided in
Uniform System of Accounts prescribed by this Commission);
likewise reduced 8 per cent, to be deducted from monthly bil
subscribers.

But this ordering clause does not include or affect installat
moving, or service connection charges.

3. The maximum subscriber toll rates between zones as spec
in ordering clauses 9 and 10 shall not exceed five cents.

4. The reductions in rates and charges above prescribed shall
come effective October 1, 1919, and shall remain in force
a27 a period of one year, and thereafter until the further o
of the Commission, and schedules stating such reduct
shall be published and filed on not less than five days' notice to
public and the Commission, such schedules to bear notation,
sued on five days' notice to the public and the Commission, u
order of the Public Service Commission, Second District, Stat
New York, of date September 16, 1919, in case No. 6974."

5. The respondent, New York Telephone Company, shall file
this Commission its notice concerning acceptance of this order, u
section 23 of the Public Service Commissions Law, within ten
after receipt of a copy hereof.

By the Commission.

[SEAL.] FRANCIS X. DISNEY,
Secretar

a28 EXHIBIT C.

State of New York,

Public Service Commission, Second District.

At a Session of the Public Service Commission, Second District, Held in the City of Albany on the 17th Day of March, 1921.

Present:

Charles B. Hill,
Chairman;
Frank Irvine,
John A. Barhite,
Joseph A. Kellogg,
George R. Van Namee,
Commissioners.

Case No. 7720.

Petition (or Complaint) of NEW YORK TELEPHONE COMPANY, under Subdivision 1, Section 97, Public Service Commissions Law, in Respect to Increasing Rates, Charges, Tolls, and Rentals to be Charged by it for Telephone Service in New York City.

In Case No. 4089 this Commission, by its order dated March 30, 1915, determined and fixed the rates and charges for service rendered by the New York Telephone Company, in the city of New York. Said order became effective July 1, 1915, and by its terms was to remain in force for a period of 3 years, and until the further order of the Commission.

a29 On July 1, 1918, at the termination of said 3 year period, the property of the New York Telephone Company was in possession and under the control of the Postmaster General, which possession and control continued until August 1, 1919.

On August 20, 1919, this Commission continued its inquiry into the justness of the rates and charges of said New York Telephone Company, in the city of New York, and after an investigation and hearings, by its order of September 16, 1919, in Case No. 6974, modified and reduced the rates and charges determined and fixed by its previous order of March 30, 1915, by providing a reduction of 8 per cent, on all of such charges of said company for exchange telephone service, except charges for installation and moving, service connection charges, and except toll rates between zones for which a maximum charge of 5¢ per message was fixed.

The said order of September 16, 1919, provided that such rates so fixed should remain in force until October 1, 1920, and thereafter until further order of the Commission.

After the entry of said last mentioned order it became necessary, in order to restore and preserve the effectiveness of the service of the

telephone company, that substantial increases should be made in the salaries and wages of the employees of said company, which increases, made with the approval and at the suggestion of this Commission, amount to approximately eleven million dollars ($11,000,000) per year.

It is claimed by the company that by reason of said increases in wages, and certain other changed conditions adding to the cost of operation, it has for some time been unable to earn its operating expenses from the revenues derived from the rates and charges fixed by said order of September 16, 1919.

a30 The said company, on or about Aug. 25, 1920, continuing the proceedings above set forth, petitioned the Commission in this case for leave to put into effect, from and after October 1, 1920, certain new schedules of rates and charges for exchange telephone service in the city of New York, which would increase its annual revenues by some sixteen million ($16,000,000) dollars.

In and since the month of October 1920 various hearings have been held in said proceeding, and much testimony taken, and it is apparent that many more hearings must be held and considerable time elapse before this proceeding can be closed and determined finally, and that said company may be damaged irreparably by the delay, unless it is afforded some relief at this time.

The said company has now, under and pursuant to the provisions of subdivision 1, section 97 of the Public Service Commissions Law, applied for the consent of this Commission to an immediate increase of rates and charges fixed and determined by said order of March 30, 1915, as modified by said order of September 16, 1919, pending the final determination of this proceeding.

It now appears to the satisfaction of this Commission, from the evidence before it in this proceeding, and also from its knowledge and information of the general condition of said company, derived from its various reports filed with this Commission according to law, and pursuant to order of this Commission, that the increase in wages of employees made effective as aforesaid since the order of this Commission of September 16, 1919, requires an additional annual expenditure of approximately eleven million dollars ($11,000,000) by said company, and to that extent decreases the income of said company from the amount anticipated it would receive from the rates established by said order of September 16, 1919, when said order was made by this Commission.

a31 After due deliberation, it is the opinion of this Commission that it should at this time, in the exercise of its discretion, and in order to prevent serious damage to said company, consent to an immediate increase of the rates and charges determined and fixed by its said order of March 30, 1915, as modified by its said order of September 16, 1919, in such amount as will provide said company with additional annual revenue in an amount approximating such increases of wages to employees, of approximately eleven million dollars ($11,000,000) annually, such increase to be without effect in any way to the further conduct of and final

determination of this proceeding, and upon conditions safeguarding the interests of the subscribers of said company, in case it should be ultimately determined that the said company is not entitled to any increase of rates, or not entitled to an increase equal to said eleven million dollars ($11,000,000).

It further appears that by reason of said deduction at 8 per cent from the revenues affected thereby, by said order of September 16, 1919, the revenues of the company have been decreased to the extent of $3,160,000. per annum; and that in order to produce the added revenue on the same basis of eleven million dollars ($11,000,000), such reduction must be restored and in addition thereto approximately two and a half times as much added thereto to the rates established by the order of March 30, 1915, which were reduced by the order of September 16, 1919.

It is therefore ordered that pending the further continuation of this proceeding, and without affecting the final determination thereof, this Commission does hereby consent that, from and after April 1, 1921, and until its further order in the premises, the rates of said New York Telephone Company, for exchange telephone service, in the city of New York, as fixed and determined a32 by the said orders of this Commission, dated March 30, 1915 and September 16, 1919, be increased by the elimination of the 8 per cent specified in said last mentioned order, and by the addition after such elimination of 20 per cent to all of the rates and charges, for exchange telephone service and facilities, determined and fixed by said order of March 30, 1915, which were reduced 8 per cent by the said order of September 16, 1919.

Provided, however, that this consent shall not be effective until said New York Telephone Company shall file with this Commission a bond or undertaking, with the American Telephone & Telegraph Company as surety, approved as to form and manner of execution by this Commission, providing for the repayment to each and every subscriber in the city of New York, upon the final determination of this proceeding by this Commission, or by the Courts in the event that this proceeding is judicially reviewed, of any amounts paid by said subscribers, from and after April 1, 1921, in excess of the rates or charges which may be fixed upon in such final determination as reasonable rates or charges for the service furnished to such subscribers, with interest on such excess mounts at a rate of 6 per cent per annum from the respective date or dates of payment thereby to the company, to the date on which such rates and charges are fixed at a less amount than herein provided for.

Upon compliance with said condition said company may file upon five days' notice a tariff in accordance with the terms of this order.

By the Commission.

[SEAL.] (Signed) FRANCIS X. DISNEY,
Secretary.

a33 EXHIBIT D.

At a Session of the Public Service Commission, State of New York, Held at the New York Office of the Commission, #49 Lafayette Street, New York City, on the 16th Day of June, 1921.

Present:

Hon. William A. Prendergast,
Chairman;
Hon. William R. Pooley,
Hon. Charles Van Voorhis,
Hon. Oliver C. Semple,
Hon. Charles G. Blakeslee,
Commissioners.

Case No. 7720.

Petition (or Complaint) of NEW YORK TELEPHONE COMPANY in Respect to Increasing Rates, Charges, Tolls, and Rentals to be Charged by it for Telephone Service in New York City.

On the 17th day of March, 1921, the Public Service Commission, Second District, by an order granted in this case, having modified the orders of the said Commission dated March 30, 1915, and September 16, 1919, respectively authorizing the said New York Telephone Company to increase its rate for exchange service in the City of New York by the elimination of the eight per cent (8%) deduction specified in the said order of September 16, 1919, and by the addition of twenty per cent (20%) to the rates for exchange service fixed by the said order of March 30, 1915;

And it appearing from statements submitted by the New York Telephone Company at the request of this Commission, that the income for the month of February, 1921, was in excess of ex-
a34 penses in an amount of $38,821.92; that the income for the month of March 1921, was in excess of expenses in an amount of $128,208.24; that the income for the month of April 1921, was in excess of expenses in an amount of $1,006,009.42; said increase of income over expenses in April reflecting the increases granted in said order of March 17, 1921;

And it further appearing from the evidence taken in said hearings that the trend of operating and other expenses is gradually and generally downward;

And it appearing therefrom that said temporary rates established under said order of March 17, 1921, will result in an increase of net operating income, equivalent to an amount regarded by this Commission as more than a fair and adequate return upon the capital investment claimed herein by the Company; so that under all the circumstances of this case, this Commission is satisfied that the public interest requires a reduction in said temporary rates charged for telephone service by said New York Telephone Company, under

uthority of said order of March 17, 1921; and that a temporary hange in the rate charged by said New York Telephone Company nder the order of the Commission dated September 16, 1919, is ecessary for the purpose of providing adequate service and for the reservation of the property.

Now, therefore, upon the terms, conditions and safeguards herein-fter stated in this order, it is

Ordered: That the aforesaid order made and filed herein by the ublic Service Commission, Second District, on the 17th day of larch, 1921, be modified and that, pending the further continuation f this proceeding and without affecting the final determination hereof this Commission does hereby consent and authorizes that, from and after July 1, 1921, and until its further order in
35 the premises, the rates of the said New York Telephone Company for exchange telephone service in the City of New York, hall be temporarily determined by the elimination of the eight per ent (8%) deduction specified in the aforesaid order of the Public ervice Commission, Second District, dated September 16, 1919, and y the addition, after such elimination, of ten per cent (10%) only, nstead of twenty per cent (20%) as heretofore ordered on March 17, 921, to the rates and charges for exchange telephone service and acilities determined and fixed by the aforesaid order of the Public ervice Commission, Second District, dated March 30, 1915; without prejudice however, to the conditions and requirements set forth n the aforesaid order of March 17, 1921, as to the bond of the said ew York Telephone Company and its surety, the American Telehone and Telegraph Company, and without prejudice to any bligations under said bond now in force to secure the repayment, ith interest at six per cent (6%) to subscribers in the City of New ork, of any amounts paid by said subscribers from and after pril 1, 1921, under the aforesaid order of March 17, 1921; and pon condition that the New York Telephone Company shall repay o each and every subscriber, all sums paid for service from and after une 30, 1921, in excess of the rate or charges which may be fixed y a final determination herein by the Commission, or the rates or harges to be demanded, exacted or collected for service to any such ubscriber; and

It is further ordered: That the said New York Telephone Comany file with this Commission a bond or undertaking with the merican Telephone and Telegraph Company as surety, approved s to form and manner of execution by this Commission, providing or the repayment to each and every subscriber of all sums paid for service from and after June 30, 1921, in excess of the rates or
36 charges which may be fixed by a final determination herein by this Commission of the rates or charges to be demanded, xacted or collected, by the said New York Telephone Company or service to any such subscriber.

By the Commission.

(Signed) FRANCIS E. ROBERTS,
[SEAL.] *Acting Secretary.*

EXHIBIT E.

State of New York,

Public Service Commission.

At a Session of the Public Service Commission, State of New Yor
Held in the City of Albany, on the 3rd Day of March 1922.

Present:

William A. Prendergast,
Chairman,

William R. Pooley,
Charles Van Voorhis,
Oliver C. Semple,
Charles G. Blakeslee,
Commissioners.

Case No. 7720.

Petition or Complaint of NEW YORK TELEPHONE COMPANY
Respect to Increasing Rates, Charges, Tolls, and Rentals to
Charged by it for Telephone Service in New York City.

On the 16th day of June, 1921, the Commission made and file
its order whereby temporary decreases in rates of New York Tel
phone Company for exchange service in New York City we
a37 authorized, effective July 1, 1921, pending a final d
termination of the rates to be thereafter demanded by th
said company upon terms, conditions and safeguards as therei
stated. Thereafter the Commission entered upon hearings as
rates, charges and rentals and the regulations and practices affec
ing the rates, charges and rentals of the said company within th
State of New York; and it appearing now to the satisfaction of th
Commission that public interest requires a further change in th
rates, charges and rentals for telephone service charged by the sai
company within the City of New York; and the Commission havin
decided to authorize an immediate temporary decrease in the rate
charges or rentals established in and by said order of June 16, 192
pending a final determination of the rates, charges or rentals to
thereafter demanded, exacted or collected by such corporation;

Now, therefore, upon the terms, conditions and safeguards her
inafter stated in this order, it is

Ordered: That the first ordering clause of said order of June 1
1921, be and the same hereby is amended and modified to read
follows:

Ordered: That the aforesaid order made and filed herein by th
Public Service Commission, Second District, on the 17th day
March, 1921, be modified and that, pending the further continuatio

of this proceeding and without affecting the final determination thereof this Commission does hereby consent and authorize that, on and after April 1, 1922, and until its further order in the premises, the rates of the said New York Telephone Company for exchange telephone service in the City of New York, shall be temporarily determined by the elimination of the eight per cent (8%) de-
a38 duction specified in the aforesaid order of the Public Service Commission, Second District, dated September 16, 1919, and by the addition, after such elimination, of five per cent (5%) only, instead of twenty per cent (20%), as heretofore ordered on March 17, 1921, to the rates and charges for exchange telephone service and facilities determined and fixed by the aforesaid order of the Public Service Commission, Second District, dated March 30, 1915; without prejudice however, to the conditions and requirements set forth in the aforesaid order of March 17, 1921, as to the bond of the said New York Telephone Company and its surety, The American Telephone and Telegraph Company, and without prejudice to any obligations under said bonds now in force to secure the repayment, with interest at six per cent (6%), to subscribers in the City of New York, of any amounts paid by said subscribers from and after April 1, 1921, under the aforesaid order of March 17, 1921; and upon condition that the New York Telephone Company shall repay to each and every subscriber, all sums paid for service from and after June 30, 1921, in excess of the rate or charges which may be fixed by a final determination herein by the Commission, of the rates or charges to be demanded, exacted or collected for service to any such subscriber;

It is further ordered: That this order shall be without prejudice to any obligation under the bond now in force to secure a repayment to each and every subscriber of all sums paid for service from and after June 30, 1921, in excess of the rate or charges which may be fixed by a final determination herein by the Commission which bond was filed pursuant to the requirements of said order
a39 of June 16, 1921 by New York Telephone Company with American Telephone and Telegraph Company as surety.

It is further ordered: That the said New York Telephone Company file with this Commission a bond or undertaking with the American Telephone and Telegraph Company as surety, approved as to form and manner of execution by this Commission, providing for the repayment to each and every subscriber of all sums paid for service on and after April 1st, 1922, in excess of the rates or charges which may be fixed by a final determination herein by this Commission of the rates or charges to be demanded, exacted or collected by the said New York Telephone Company for service to any such subscriber.

By the Commission.

[SEAL.] (Signed) FRANCIS E. ROBERTS,
Secretary.

a40 EXHIBIT F.

State of New York,

Public Service Commission.

At a Session of the Public Service Commission Held in the City
Albany on the 3rd Day of March, 1922.

Present:

William A. Prendergast,
Chairman;
William R. Pooley,
Charles Van Voorhis,
Oliver C. Semple,
Charles G. Blakeslee,
Commissioners.

Case No. 377.

In the Matter of the Hearings on Motion of the Commission as
Rates, Charges, and Rentals and the Regulations and Practic
Affecting the Rates, Charges, and Rentals of THE NEW YO
TELEPHONE COMPANY.

The Public Service Commission having entered upon hearings as
rates, charges and rentals and the regulations and practices affectin
the rates, charges and rentals of the New York Telephone Compan
within the State of New York;

And it appearing to the satisfaction of the Commission that publ
interest requires a change in the rates, charges and rentals for tel
phone service charged by the New York Telephone Company withi
the State of New York, temporarily and pending a final determin
tion of the rates, charges and rentals to be thereafter demanded, e
acted or collected by said New York Telephone Company;

a41 Now, therefore, under the provisions of the Public Servi
Commission Law, it is

Ordered, (1) That all of the towns, cities and villages hereinafte
named in which the said New York Telephone Company operate
exchanges, and all of the telephone exchanges therein, are hereb
for the purpose of this Order, and for the purposes of the temporar
rates established by this Order, classified and divided into groups
in this Order, hereinafter stated, and that the rates, charges an
rentals to be hereafter demanded, exacted, or collected by the sai
New York Telephone Company shall be as in this Order stated, a
said rates, charges and rentals to take effect and be in force on an
after April 1st, 1922, and to remain in force and effect pending
final determination of the rates, charges and rentals to be thereafte
demanded, exacted or collected by such New York Telephone Com
pany, or until the further Order of this Commission. All rate

charges and rentals applying to any and all other service furnished by said New York Telephone Company to be and remain as stated in the Company's schedules of rates, rentals and charges for service.

The grouping and classification of said towns, cities and villages, and the exchanges operated therein, and the temporary rates, charges or rentals to be demanded, exacted or collected therein, shall be as follows, and payable monthly in advance:

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Group I.

Arkport.
Barker.
Bliss.
Campbell.
Carmel.
Cayuga.
Center Brunswick.
Cicero.
Commack.
Elba.
Enfield Center.
Esopus.
Fabius.
Greenwood Lake.
Hermitage.
Kendall.
Kent Cliff.
Newfield.
North Clove.
Osceola.
Owasco.
Parish.
Phœnicia.
Pleasant Valley.
Porters Corners.
Selden.
Sharon Springs.
Shokan.
South Onondaga.
South Salem.
Stanfordville.
Varysburg.
Waterport.
Woodstock.
Yorktown Heights.

Basic Area Rates.

	Per month.
Business telephone, 1 party, unlimited service	$3.00
Residence " 1 " " "	2.25
Business " 4 " " "	2.25
Residence " 4 " " "	2.00

Rural Service:

Business telephone	2.25
Residence "	2.00

Group II.

Alden.	*East Quogue.	Pine Hill.
Altamont.	East Syracuse.	Portville.
Amagansett.	Fayetteville.	Ransomville.
Amenia.	Floral Park.	Ronkonkoma.
Angola.	Forestville.	Rosendale.
Averill Park.	Garden.	Sackett Harbor.
Avoca.	Garrison.	Sag Harbor.
Bayport.	Groton.	Sempronius.
Bolton.	Highland Falls.	Shoreham.
Brentwood.	High Falls.	Silver Creek.
Bridgehampton.	Holland.	Smithtown.
Camden.	Horseheads.	South Dayton.
Canaseraga.	Hyde Park.	Springville.
Canisteo.	Interlaken.	Trumansburg.
Castleton.	Jonesville.	Tully.
Central Islip.	Lake George.	Union Springs.
Chatham.	Lewiston.	Valley Falls.
Cleveland.	Liverpool.	Voorhesville.
Clinton Corners.	Mahopac.	Warrensburg.
Constantia.	Moravia.	Water Mill.
Croton Falls.	Orchard Park.	Weedsport.
Deposit.	Patterson.	Wingdale.
Dover Plains.	Philmont.	Youngstown.

*a*43 *Basic Area Rates.*

						Per m
Business telephone,	1	party,	unlimited	service	.....	$3.
Residence "	1	"	"	"	.....	2.
Business "	4	"	"	"	.....	2.
Residence "	4	"	"	"	.....	2.

Rural Service:

Business telephone	2.
Residence "	2.

NOTE.—In all Exchanges having more than one rate zone, same rate differences now existing between zones shall apply.

*Correction as per Commission's letter dated 3/9/22.

Group III.

Akron.
Amityville.
Arcade.
Attica.
Baldwinsville.
Bath.
Barneveld.
Bedford Village.
Bellport.
Brewster.
Burnt Hills.
Canastota.
Center Moriches.
Chappaqua.
Cherry Creek.
Clarksville.
Clintondale.
Clinton.
Cobleskill.
Cold Spring.
Dolgeville.
Easthampton.
Eastport.
Eden.
Ellenville.
Farmingdale.
*Fleischmanns.
Gasport.
Good Ground.
Goshen.
Gowanda.
Greenport.
Hamburg.
Hamilton.
Hicksville.
Highland.
Holley.
Hoosick Falls.
Islip.
Jamesport.
Jordon.
Katonah.
Kings Park.
Liberty.
Long Beach.
*[Lydonville]† Lyndonville.
Marlboro.
Massapequa.
Mattituck.
Mexico.
Middleport.
Millbrook.
Milton.
Montour Falls.
Oakfield.
Newfane.
New Paltz.
North Collins.
Northport.
North Salem.
Orient.
Pawling.
Pearl River.
Peconic.
Port Jefferson.
Quogue.
Riverhead.
Sayville.
Setauket.
Shelter Island.
Skaneateles.
Southhold.
St. James.
Stony Brook.
*Wappingers Falls.
Watkins.
Westbury.
West Hampton.
Williamsville.
Wilson.
Woodmere.
Yaphank.

a44 *Basic Area Rates.*

	Per month.
Business telephone, 1 party, unlimited service	$3.75
Residence " 1 " " "	2.75
Business " 2 " " "	3.35
Residence " 2 " " "	2.50
Business " 4 " " "	3.00
Residence " 4 " " "	2.10

Rural Service:

Business telephone	2.75
Residence "	2.10

NOTE.—Two party line service may be furnished subscribers in the exchanges in this group at the option of the Company at a rate of not in excess of the one set forth.

NOTE.—In all Exchanges having more than one rate zone, the same rate differences now existing between zones shall apply.

*Corrections as per Commission's letter dated 3/7/22.
[†Erased in copy.]

Group IV.

Albion.	Greenwich.	Patchogue.
Babylon.	Hastings.	Penn Yan.
Ballston.	Haverstraw.	Piermont.
Barre Center.	Huntington.	*Pleasantville.
Bay Shore.	Lindenhurst.	Pt. Washington.
Beacon.	Manhasset.	Roslyn.
Blue Point.	Medina.	Saugerties.
Catskill.	Mt. Kisco.	Schuylerville.
Cold Spring Harbor.	Nanuet.	Southampton.
Congers.	New City.	Spring Valley.
Derby.	New Hartford.	Suffern.
East Aurora.	Nyack.	Valley Stream.
Endicott.	Owego.	Whitesboro.
Great Neck.	Oyster Bay.	Ulster Park.

Basic Area Rates.

	Per mont
Business telephone, 1 party, unlimited service.....	$4.25
Residence " 1 " " "	3.00
Business " 2 " " "	3.65
Residence " 2 " " "	2.75
Business " 4 " " "	3.25
Residence " 4 " " "	2.25

Rural Service:

Business telephone.....	3.00
Residence "	2.55

NOTE.—In all Exchanges having more than one rate zone, t
same rate differences now existing between zones shall apply.

*Correction as per Commission's letter dated 3/20/22.

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Group V.

Allegany.	Hornell.	*[Portchester.]†
Batavia.	Hudson.	Port Chester.
Briarcliff.	Ilion.	Rockville Center.
Claverack.	Irvington.	Rome.
Corning.	Lancaster.	Rye.
Cortland.	Little Falls.	Salamanca.
Dobbs Ferry.	Lockport.	Saratoga Springs.
Dunkirk.	Lynbrook.	Seneca Falls.
Fayette.	Mamaroneck.	Sloatsburg.
Frankfort.	McGraw.	Tarrytown.
Freeport.	Mechanicsville.	*[Towanda.]†
Garden City.	Olean.	Tonawanda.
Geneva.	Oneida.	Waterloo.
Glen Cove.	Park (New Rochelle).	Wanakah.
Hempstead.	Ossining.	Waverly.
Herkimer.	Oswego.	Wantagh.
Homer.	Peekskill.	

Basic Area Rates.

						Per month.
Business telephone,	1	party,	unlimited	service	.....	$5.25
Residence "	1	"	"	"	.....	3.25
Business "	2	"	"	"	.....	4.25
Residence "	2	"	"	"	.....	2.85
Business "	4	"	"	"	.....	3.75
Residence "	4	"	"	"	.....	2.35

Rural Service:

Business telephone	3.10
Residence "	2.35

NOTE.—Business 4 party line service may be furnished subscribers in the exchanges in this group at the option of the Company at a rate not in excess of the one set forth.

NOTE.—In all Exchanges having more than one rate zone, the same rate differences now existing between zones shall apply.

*Corrections as per Commission's letter dated 3/7/22.
[†Erased in copy.]

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Group VI.

Amsterdam.
Argyle.
Auburn
Brookville.
Elmira.
Elmsford.
Fort Edward.
Glens Falls.
Hudson Falls.
Kattskill Bay.
Kingston.
La Salle.
Newburgh.
Niagara Falls.
Poughkeepsie.
Ramapo Hills.
Scarsdale.
Watertown.
White Plains.

Basic Area Rates.

	Per month
Business telephone, 1 party, unlimited service	$6.25
Residence " 1 " " "	3.50
Business " 2 " " "	5.25
Residence " 2 " " "	3.00
Residence " 4 " " "	2.50

Rural Service:

Business telephone	3.25
Residence "	2.50

NOTE.—In all Exchanges having more than one rate zone, th same rate differences now existing between zones shall apply.

Group VII.

Binghamton.
Bronxville.
Hillcrest.
Johnson City.
Mt. Vernon.
Larchmont.
New Rochelle.
Oakwood.
Pelham.
Tuckahoe.
Yonkers.

Basic Area Rates.

	Per month.
Business telephone, 1 party, unlimited service	$7.00
Residence " 1 " " "	3.75
Business " 2 " " "	6.00
Residence " 2 " " "	3.25
Residence " 4 " " "	2.65

Rural Service:

Business telephone	3.40
Residence "	2.65

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Group VIII.

Cohoes.
North Troy.
Schenectady.
Troy.
Utica.
Waterford.
Watervliet.

Basic Area Rates.

	Per month.
Business telephone, 1 party, unlimited service	$8.00
Residence " 1 " " "	4.00
Business " 2 " " "	6.25
Residence " 2 " " "	3.40
Residence " 4 " " "	2.75

Rural Service:

Business telephone	3.60
Residence "	2.75

Group IX.

Albany. {Main. East. West.
Syracuse. {James. Warren. Montgomery.
*Delmar.

Basic Area Rates.

	Per month.
Business telephone, 1 party, unlimited service	$8.50
Residence " 1 " " "	4.25
Business " 2 " " "	6.50
Residence " 2 " " "	3.50
Residence " 4 " " "	2.85

Rural Service:

Business telephone	3.75
Residence "	2.85

*Corrections as per Commission's letter dated 3/7/22.

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Group X.

Buffalo.

Basic Area Rates.

	Per month.
Individual Line, Business and Residence*, Message:	
80 or less	$4.00
Next 120—each	.05
Next 50—each	.04
All over 250—each	.03
Residence telephone, 1 party, Individual line, unlimited	4.75
Residence " 2 " "	3.75
4 Party, Residence only*, Message:	
60 or less	2.75
Next 40—each	.04
All over 100—each	.03
Outside Area:	
4 Party Line, Business and Residence*, Message:	
70 or less	$3.25
Next 30—each	.04
All over 100—each	.03

Group XI.

New York City.

(Comprising the Boroughs of Manhattan, The Bronx, Brooklyn, Queens and Richmond.)

The rates for this group shall be as prescribed in the Order of March 3rd, 1922, in Case No. 7720, upon terms and conditions as therein set forth.

Special Group A.

Company's present rates for these exchanges will apply:

Bayside.
Blue Stores.
Ithaca.
Lycoming.
Prospect.
Solvay.
Syosset.
Tuxedo.
Wheatley Hills.

*Corrections as per Commission's letter dated 3/7/22.

649-50 Ordered: (2) This Order is made without prejudice to the conditions and requirements of any and all bonds heretofore given by the said New York Telephone Company in any and all proceedings involving rates, charges and rentals, applicable to any or all of the various exchanges listed herein, and without prejudice to any obligation of the New York Telephone Company, or its sureties, on any bonds heretofore given in any proceeding and now in force, to secure repayments to subscribers of sums paid for services under order therein of the former Public Service Commission, Second District, State of New York, or of this Commission, in excess of the rates, charges or rentals which may be fixed therein by final determination of the Commission as the rates, charges or rentals to be demanded, exacted or collected for service to any such subscribers.

Ordered: (3) It is further Ordered that the New York Telephone Company, and any and all municipalities affected by this Order, may apply to the Commission for a modification of the classifications hereinbefore made, by filing application, in writing, stating the reasons therefor, at the Office of the Commission at Albany, New York, on or before April 15th, 1922.

By the Commission.

[SEAL.] (Signed) FRANCIS E. ROBERTS,
Secretary.

651 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of James A. Stewart.

STATE OF NEW YORK,
County of New York, ss:

James A. Stewart, being duly sworn, says that he is the First Vice President and General Manager of the plaintiff, New York Telephone Company, and resides at East Orange, New Jersey. That he was graduated from the University of Pennsylvania in the year 1892 with the degree of Bachelor of Science and was given the degree of Mechanical Engineer by the same University in the year 1893. That he has been employed by the plaintiff and its predecessor corporation, the Metropolitan Telephone and Telegraph Company, for twenty-nine years continuously. That he was first employed as En-

gineer in the Engineering Department, was afterwards in the Plant Department, and subsequently became the head thereof. That on or about January 1, 1912, he became the General Manager of the plaintiff, and afterwards and on or about October 29, 1919, First Vice President and General Manager thereof, which position he still holds. That ever since becoming General Manager he has had and still has general charge of all of the operating departments of the plaintiff.

a52 That he is thoroughly familiar with all the branches of plaintiff's business and with its methods of conducting the same and with all its plant and property. That the plaintiff owns and operates telephone lines and exchanges and conducts a public telephone business in The City of New York and throughout fifty-nine of the sixty-two counties of the State of New York and in the twelve northern counties of the State of New Jersey and in the Town of Greenwich in the State of Connecticut. That plaintiff furnishes exchange service and also intrastate and interstate toll telephone service. That it has at the present time in its entire system 456 central offices or exchanges. That of said central offices 79 are within The City of New York; 291 within the State of New York in that part thereof which is outside of The City of New York, and 86 are located outside of the State of New York.

That the plaintiff owns in the State of New York 137 parcels of land and buildings which it acquired at an actual cost of more than $36,000,000. In addition to these buildings plaintiff has others in course of construction of a value of more than $1,500,000. That of said 137 parcels of land and buildings 65 are within The City of New York and 72 in that part of the State outside of The City of New York. That the plaintiff has in operation in the State of New York more than 5,000,000 miles of electrical wires, by far the greatest part of which are composed of copper, and more than 3,587,000 miles thereof are within The City of New York.

The plaintiff is now operating in its entire system upwards of 1,727,233 telephones, or as they are commonly referred to in the telephone business, "stations." That of said number of stations 1,011,014 are in The City of New York and 448,680 in that part of the State of New York which is outside of The City of New York, and the balance are located in the territory of the Company out-

a53 side of the State of New York. That the number of stations operated by the plaintiff is growing continually, and the estimated growth in the number of stations during the year 1922 in the State of New York is upwards of 8% of the stations now in service, or, in other words, approximately 116,000 stations will be added to the plaintiff's system in that State during the year.

That the plaintiff has in the State of New York more than 836,000 accounts with subscribers and the average number of monthly bills which it has to send to subscribers on account of service furnished to them is in excess of 787,000; that of such number approximately 450,000 of the subscribers to whom such bills are sent are in The City of New York and approximately 337,000 in that part of the State of New York which is outside of The City of New York.

That at the time when deponent began his employment with the redecessor of the plaintiff, the Metropolitan Telephone and Tele-raph Company, twenty-nine years ago, that Company had in opera-on in The City of New York less than 8,000 stations, and, as above ated, plaintiff now has in operation in said City over 1,000,000 tations.

That the volume of telephone traffic handled by the plaintiff in he State of New York is indicated by the fact that originating mes-ages (that is to say, messages sent from stations) during the year 921 were as follows: local messages, 2,158,038,630; toll messages, 2,244,800; long distance messages, 6,513,392.

That the plant and property of the plaintiff is at all times kept in rst-class condition by making currently all proper repairs and re-ewals, so that from an operation and service standpoint all of the lant and property in its entire system is at all times in a 100% ondition.

That the business of the plaintiff requires large amounts
54 of new capital continually. That this is so because of the continual growth of the business and on account of its char-cter. That as each new subscriber or user of the service is added o the system, it is necessary to install a new telephone, wiring and quipment, a copper circuit running from the place where the tele-hone station is located to the central office from which the telephone s served, and a separate location on the switchboard at such central ffice. That as the capacity of the switchboards of the plaintiff is illed up, it requires the installation of new switchboards, apparatus nd equipment, the re-arrangement of central offices and the acquisi-ion of additional real estate and the construction of new buildings, he total cost of which runs into great sums of money. That the ctual expenditures made by the plaintiff for additional property and onstruction during the years 1920 and 1921 were as follows:

	1920.	1921.
Entire System	$35,394,000	$48,037,000
State of New York	29,950,000	40,790,000
City of New York	25,032,000	35,174,000

That the following amounts will be necessarily expended by the laintiff for additional property and construction during the years 922 and 1923:

	1922.	1923.
Entire System	$49,324,000	$50,000,000
State of New York	42,247,800	43,000,000
City of New York	36,436,600	37,000,000

That the amounts above stated do not include other substantial mounts which plaintiff has actually expended in the years 1920 and 921 and will have to expend in the years 1922 and 1923 for mis-ellaneous general equipment and interest during construction.

That since becoming General Manager of the plaintif
a55-56 in the year 1912, one of deponent's chief duties has bee
to supervise and examine into the operating expenses of th
plaintiff and he has made every effort during all of the time sinc
that date to effect as many economies as possible and to keep the op
erating expenses at as low a level as is consistent with the mainte
nance of the plant and the furnishing of good service. That in th
opinion of deponent the operating expenses of the Company at th
present time and during the past are and have been fair and reason
able.

JAMES A. STEWART.

Subscribed and sworn to before me this 29th day of March, 1922.
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a57 District Court of the United States, Southern District o
New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Jacob S. Wiley.

STATE OF NEW YORK,
County of New York, ss:

Jacob S. Wiley being duly sworn, deposes and says: That he re
sides at Summit, New Jersey. That he was first employed in the
telephone business in the year 1892 by the New York and New Jer
sey Telephone Company, which corporation was at that time operat
ing in the City of Brooklyn and elsewhere and was one of the pred
ecessors of the plaintiff, and that he has been continuously em
ployed by Bell telephone companies in accounting work since that
time. That since December 1, 1912, he has been the chief account
ing officer of the plaintiff with the title of General Auditor and has
complete charge of all plaintiff's accounts and accounting systems
and is thoroughly familiar with the same.

That the accounts of the plaintiff, the New York Telephone Com
pany, are and have been since January 1, 1913, kept in accordance
with accounting regulations prescribed by the Interstate Commerce
Commission and adopted and approved by the Public Service
a58 Commission, Second District, of the State of New York; that
as so kept said accounts do not separate the portions of plain-

tiff's investment used in its toll service between intrastate and interstate, nor do they separate expense items relating to both said services. For the purposes of this affidavit the basis of apportionment shown by the affidavit of Andrew Sangster is adopted.

That the average cost of plaintiff's property as hereinafter stated is made up from items taken from three accounts prescribed by the said regulations of the Interstate Commerce Commission, which are

Account No. 101, Fixed Capital.

Account No. 104, Construction Work in Progress.

Account No. 122, Supplies.

That the said account "Fixed Capital" includes the items making up the cost of plant in service; that the account "Construction Work in Progress" includes the items making up the cost of like plant in course of construction and intended to be put into service as soon as completed; and the account "Supplies" cover items of the character indicated by the title.

That the amounts in these accounts are continually changing and that the following statements are in each instance based upon the average in each of these accounts for the period covered by the statement in question.

That the variations for different periods in the items "Fixed Capital" and "Construction Work in Progress" are due to the fact that additions to the plant of the plaintiff company are constantly being built, which are treated as construction work in progress until the plant is put into service and which then become items to go into the account "Fixed Capital"; that the net additions to the "Fixed Capital" account on account of property put into service were for the year 1919 for the entire state of New York $11,018,113., for
a59 the year 1920 $17,914,899, and for the year 1921 $20,757,258.; and that the net additions to the account "Construction Work in Progress," taking into account the deductions from it because of completed work added to the "Fixed Capital" account and the additions to it on account of new construction commenced, were for the year 1919 $804,351., for the year 1920 $10,666,983., and for the year 1921 $10,287,381.

The statements as to costs hereinafter set out contain nothing on account of franchises or on account of the item known as going concern value.

1919.

That the net return earned by the plaintiff through its telephone rates and the rendition of its intrastate telephone service in the State of New York during the year 1919 amounted to 5.72% of the cost of its property used or useful in and devoted solely to the rendition of the said service, including necessary working cash; that a statement showing said costs and the results of said operations for 1919 is as follows:

Average Cost of Property.

Average Fixed Capital	$170,007,955
Average Construction Work in Progress	1,672,202
Average Working Cash	4,016,514
Average Supplies	2,758,931
Total	$178,455,602

Telephone Revenues.

Exchange Service	$51,316,643
Toll Service	7,850,985
Miscellaneous	1,182,793
Total Telephone Revenue	$60,350,421

a60 *Telephone Expenses.*

Current Maintenance	$7,300,481
Depreciation and Amortization	8,804,693
Traffic	17,106,123
Commercial	6,681,713
General and Miscellaneous	1,497,233
Uncollectible Operating Revenue	149,726
Taxes	3,806,552
Rent Expense and Deductions	1,919,307
Miscellaneous Deductions	310,093
Licensee Contract Expense	2,559,234
Total Telephone Expense	$50,135,155
Net Telephone Revenue	$10,215,266
Per cent Net Revenue	5.72%

1920.

That for the year 1920 the net return earned by the plaintiff through its intrastate telephone rates and the rendition of its telephone service in the State of New York amounted to 1.37% of the cost of its property used or useful in and devoted solely to the rendition of the said service, including necessary working cash; that as will appear from the statement which follows, the marked decrease in the net revenue from the said service during the year 1920 was due to large increases in operating expenses which increases were necessary in order to restore efficient service and were made largely at the suggestion and with the approval of the Public Service Commission of the State of New York; that a statement showing said cost and the results of said operations for 1920 is as follows:

Average Cost of Property.

verage Fixed Capital	$184,088,621
verage Construction Work in Progress	7,448,426
verage Working Cash	5,402,362
verage Supplies	3,121,197
Total	$200,060,606

Telephone Revenues.

xchange Service	$59,071,313
oll Service	9,474,753
iscellaneous	1,301,350
Total Telephone Revenue	$69,847,416

Telephone Expenses.

urrent Maintenance	$10,139,171
epreciation and Amortization	9,381,662
raffic	27,682,021
ommercial	8,324,253
eneral and Miscellaneous	2,054,620
ncollectible Operating Revenue	114,340
axes	3,926,554
ent Expense and Deductions	2,184,250
iscellaneous Deductions	329,331
icense Contract Expense	2,963,465
Total Telephone Expense	$67,099,667
Net Telephone Revenue	$2,747,749
Per Cent. Net Revenue	1.37%

1921—First Quarter.

That for the first quarter of 1921 the net return earned by the aintiff through its intrastate telephone rates and the rendition of s service in the State of New York amounted to 1.29% (annual sis) of the cost of its property used or useful in and devoted solely the rendition of the said service, including necessary working sh.

*a*62 The detailed figures for the said first quarter of the y
1921 are so follows:

Average Cost of Property.

Average Fixed Capital	$195,210,(
Average Construction Work in Progress	13,658,4
Average Working Cash	5,651,8
Average Supplies	4,322,(
Total	$218,843,(

Telephone Revenues.

Exchange Service	$15,524,3
Toll Service	2,466,3
Miscellaneous	326,7
Total Telephone Revenue	$18,317,3

Telephone Expenses.

Current Maintenance	$2,490,5
Depreciation and Amortization	2,502,1
Traffic	7,390,7
Commercial	2,151,3
General and Miscellaneous	544,(
Uncollectible Operating Revenue	26,2
Taxes	1,014,(
Rent Expense and Deductions	609,(
Miscellaneous Deductions	82,(
Licensee Contract Expense	798,(
Total Telephone Expense	$17,609,3
Net Telephone Revenue	$708,(
Per Cent. Net Revenue (annual basis)	1.2

*a*63 1921—Second Quarter.

The Public Service Commission of the State of New York, by
order made March 17, 1921, consented to an increase in the rates
exchange service in the City of New York. Under this consent
plaintiff established rates for said service effective April 1, 1921,
rates so established being the maximum rates fixed by the order
said commission made March 30, 1915, plus an addition of 20

That during the said Second Quarter of 1921, the plaintiff ear
through its intrastate telephone service in the State of New Y
a return of 6.01% (annual basis) upon the cost of its telephone pr
erty in the said State used or useful in and solely devoted to

rendition of said service; that the detailed figures for the Second Quarter of 1921 are as follows:

Average Cost of Property.

Average Fixed Capital	$202,316,597
Average Construction Work in Progress	14,468,772
Average Working Cash	5,797,553
Average Supplies	4,175,502
Total	$226,758,424

Telephone Revenues.

Exchange Service	$18,432,401
Toll Service	2,734,407
Miscellaneous	298,437
Total Telephone Revenues	$21,465,245

a64 *Telephone Expenses.*

Current Maintenance	$2,702,479
Depreciation and Amortization	2,591,779
Traffic	6,882,966
Commercial	2,414,437
General and Miscellaneous	595,627
Uncollectible Operating Revenue	30,489
Taxes	1,294,809
Rent Expense and Deductions	606,300
Miscellaneous Deductions	92,970
Licensee Contract Expenses	847,696
Total Telephone Expense	$18,059,552
Net Telephone Revenue	$3,405,693
Per Cent. Net Revenue (annual basis)	6.01%

1921—Last Half.

That, by reason of the order of said commission made June 16, 1921, the rates which had been charged for exchange service in the City of New York during the second quarter of said year were reduced by making the basis 10% in excess of the maximum fixed by the order of March 30, 1915, instead of 20%; that during the last half of the year 1921 the return to the plaintiff on account of its intrastate telephone service in the State of New York amounted to 3.41% of the said cost of the property used or useful in and devoted solely to the rendition of said service; that the detailed figures for the last six months of 1921 are as follows:

Average Cost of Property.

Average Fixed Capital	$210,414,267
Average Construction Work in Progress	18,775,750
Average Working Cash	5,864,486
Average Supplies	3,155,795
Total	$238,210,298

a35 *Telephone Revenues.*

Exchange Service	$33,895,231
Toll Service	5,616,407
Miscellaneous	737,924
Total Telephone Revenue	$40,249,562

Telephone Expenses.

Current Maintenance	$5,559,786
Depreciation and Amortization	5,371,791
Traffic	14,141,662
Commercial	4,826,595
General and Miscellaneous	1,043,002
Uncollectible Operating Revenue	58,663
Taxes	1,788,138
Rent Expense and Deductions	1,384,181
Miscellaneous Deductions	216,064
Licensee Contract Expense	$36,188,162
Total Telephone Expense	1,798,280
Net Telephone Revenue	$4,061,400
Per Cent. Net Revenue (annual basis)	3.41%

Year 1921.

That the net return earned by the plaintiff through its intrastate telephone rates and the rendition of its telephone service in the State of New York during the year 1921 amounted to 3.55% of the cost of its property used or useful in and devoted solely to the rendition of the said service, including working cash; and for the month of January, 1922, amounted to 3.52% (annual basis) of said cost; that a statement of said cost and the results of said operations for 1921 and for January, 1922, is as follows:

Whole Year 1921.

Average Cost of Property.

erage Fixed Capital	$203,213,238
erage Construction Work in Progress	17,960,228
erage Working Cash	5,793,353
erage Supplies	3,302,764
Total	$230,269,583

Telephone Revenues.

change Service	$67,852,022
ll Service	10,817,114
scellaneous	1,363,068
Total Telephone Revenues	$80,032,204

Telephone Expenses.

rrent Maintenance	$10,752,780
preciation and Amortization	10,465,722
affic	28,415,359
mmercial	9,392,241
neral and Miscellaneous	2,182,655
collectible Operating Revenue	115,428
xes	4,097,628
nt Expense and Deductions	2,600,139
scellaneous Deductions	391,093
censee Contract Expense	3,443,979
Total Telephone Expense	$71,857,024
Net Telephone Revenue	$8,175,180
Per Cent. Net Revenue (annual basis)	3.55%

January, 1922—Annual Basis.

Average Cost of Property.

verage Fixed Capital	$213,952,169
verage Construction Work in Progress	23,388,230
verage Working Cash	5,758,372
verage Supplies	3,099,094
Total	$246,197,865

Telephone Revenues.

Exchange Service	$5,911,59
Toll Service	887,82
Miscellaneous	133,95
Total Telephone Revenue	$6,933,37

Telephone Expenses.

Current Maintenance	$925,36
Depreciation and Amortization	918,57
Traffic	2,351,39
Commercial	821,84
General and Miscellaneous	206,31
Uncollectible Operating Revenue	10,28
Taxes	413,78
Rent Expense and Deductions	229,77
Miscellaneous Deductions	39,23
Licensee Contract Expense	294,98
Total Telephone Expense	$6,211,56
Net Telephone Revenue	$721,80
Per Cent. Net Revenue (annual basis)	3.529

That the amounts by which the net telephone revenues derive by the company from its intrastate telephone business in th
a68 State of New York fall short of a return of 8% upon sai cost of the property used or useful in and devoted to th rendition of said telephone business are as stated below for th respective periods indicated:

Year 1919	$4,061,18
Year 1920	13,257,09
First quarter 1921	3,668,77
Second quarter 1921	1,129,47
Last half year 1921	5,467,01
Year 1921	10,265,26
January 1922	919,51

JACOB S. WILEY.

Subscribed and sworn to before me this 29th day of March, 192
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a69 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Andrew Sangster.

STATE OF NEW YORK,
County of New York, ss:

I, Andrew Sangster, being duly sworn, on oath state:

I reside at 188 Fairmount Avenue, Chatham, New Jersey.

I am a member of the firm of Sangster and Matthews, Chartered Accountants, with offices at 25 Broadway, New York City, and 134 South La Salle Street, Chicago, Illinois, which firm practises as consulting accountants, specializing in matters pertaining to public utility accounting; that in such capacity the said firm has been employed by various State Public Service Commissions, Municipalities, and Public Utility Corporations to advise and assist in public utility valuations and rate cases, and to perform accounting services in connection therewith.

That in the year 1914 I was appointed Chief Accountant of the Valuation Bureau of the Public Utilities Commission of the District of Columbia, which Commission was then, and for a period of about three years thereafter, engaged in a valuation of all the public utility properties operating in said district, including the Chesapeake
a70 and Potomac Telephone Company, which position I continued to hold for a period of about three years; that in 1914 and 1915 I was employed by a Joint Legislative Committee of the State of New York, appointed to investigate telephone rates and service in the City of New York and in the State of New York; that in the year 1917 I was employed by the City of Birmingham, Alabama, to investigate the accounts of the Southern Bell Telephone and Telegraph Company, with reference to its property, revenue and expenses in the cities of Birmingham and Bessemer, Alabama; that in 1919 I was employed by the Chicago Telephone Company (now the Illinois Bell Telephone Company) to investigate and report upon its plant accounting methods for property in the City of Chicago; that in all of the above cases I have appeared before the Public Service Commission or other constituted authority having jurisdiction or supervision therein and testified in regard to matters of accounting. In the practise of my profession I have also acted in a similar capacity with reference to valuations and rate questions affecting street railway, gas, electric light and power, and water companies.

I am familiar with the Uniform System of Accounts prescribed by order of the Interstate Commerce Commission for telephone companies throughout the United States and approved and adopted by the Public Service Commission of the State of New York, and I am also familiar with the accounting methods and practices of the New York Telephone Company under the said system of accounts.

That the property of the plaintiff used or useful in the rendition of its telephone service in the State of New York and devoted exclusively to that service is used in the performance of two services as the said services are classified under the rates therefor now
a71 in effect, one of these services being the interstate toll service furnished by said company, and the other being the general intrastate telephone service furnished by said company.

That where portions of the said property are not used exclusively for one of these services but are used in both of them, and where expense accounts do not relate solely to one class of service but include both of them, it has been necessary to make separations in order to determine the cost of plaintiff's property devoted exclusively to its intrastate telephone service within the state of New York, and to determine the expenses properly attributable to this service; that the fundamental basis adopted in the making of this separation is the extent to which property so jointly used is used in each of the two classes of service.

A complete list of the accounts covering the plaintiff's property, revenues and expenses relating to its telephone operations is set out below and in connection with each account it is indicated whether it has been necessary to apportion it in order to make the separation between the plaintiff's intrastate and interstate business, and, where the account is apportioned, the basis of the apportionment is set out.

Property.

Account No.

201. Organization.

204. Other Intangible Capital.

These accounts were apportioned in the ratio of the book costs of plant devoted to interstate toll service and to all intrastate service respectively to the book cost of total plant.

207. Right of Way.

This account was apportioned on the basis of the use of exchange and toll lines for interstate toll service and for all
a72 intrastate service respectively.

211. Land.

212. Buildings.

These accounts were apportioned between interstate toll service and all intrastate service on the basis of the ratio of book cost of central office equipment devoted to interstate toll service and to all intrastate service respectively to the book cost of total central office equipment.

ccount No.

220. Central Office Telephone Equipment.

The book cost of central office equipment in the five separate toll offices in New York City was obtained from the books. The book cost of separate toll switchboards outside of New York City was estimated by applying to the number of operators' positions the estimated average cost per position. The total cost of exclusively toll central office equipment thus determined was apportioned between interstate and intrastate toll service on the basis of its use for the two classes of service respectively.

The cost of message registers was determined and assigned to intrastate service exclusively.

The remaining central office equipment was apportioned between interstate toll service and all intrastate service on the basis of its use for the respective classes of service.

230. Station Equipment.

This account was apportioned on the basis of its use for interstate toll service and for all intrastate service respectively.

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241. Exchange Pole Lines.
242. Exchange Aerial Cable.
243. Exchange Aerial Wire.
245. Exchange Underground Cable.
246. Exchange Submarine Cable.
251. Toll Pole Lines.
252. Toll Aerial Cable.
253. Toll Aerial Wire.
255. Toll Underground Cable.
256. Toll Submarine Cable.

The amount included in these accounts covering interoffice exchange trunks devoted to intrastate service exclusively was deducted and assigned to intrastate service. The balance remaining representing plant used in common for interstate toll service and total intrastate service was apportioned on the basis of its use for the respective classes of service.

244. Exchange Underground Conduit.
254. Toll Underground Conduit.

Subsidiary exchange conduit is devoted to intrastate service exclusively.

The total main underground conduit included in these accounts was apportioned between interstate toll service and all intrastate service on the basis of its use for the respective classes of service.

Account No.

104. Construction Work in Progress.
260. General Equipment.

These accounts were apportioned between interstate toll service and all intrastate service on the basis of the ratio of plant in service devoted to the respective classes of service to total plant in service.

a74 *Revenues.*

500. Subscribers' Station Revenues.
501. Public Pay Station Revenues.
502. Miscellaneous Exchange Service Revenues.

These accounts relate to intrastate service exclusively.

510. Message Tolls.
511. Miscellaneous Toll Service Revenues.

The amount included in these amounts representing revenue from interstate service was determined from the records of the company.

523. Advertising and Directory revenue was apportioned between interstate toll service and all intrastate service on the basis used to apportion Directory Expenses—Account 649 as explained hereinafter under "Expenses."

521. Telegraph Commissions.

This account relates to intrastate service exclusively.

525. Other Miscellaneous Revenue.

This account was assigned to intrastate service exclusively.

310. Rent Revenue from Lease of Telephone Plant.

This account was assigned to intrastate service exclusively a

311. Miscellaneous Rent Revenues.

This account was apportioned on the basis of the book cost of buildings attributable to interstate toll service and all intrastate service respectively, to the total book cost of buildings.

491. Miscellaneous Additions to Surplus.

This account was assigned to intrastate service exclusively.

Expenses.

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01. Supervision of Maintenance.

This account was apportioned on the basis of the ratio of repairs of plant devoted to interstate toll service and repairs of plant devoted to all intrastate service respectively included in Accounts 602 to 607 inclusive.

02. Repairs of Aerial Plant.

Repairs of Pole Lines, Aerial Cable, Aerial Wire and Right-of-Way were apportioned on the basis of the book costs of the respective classes of plant devoted to interstate toll service and to all intrastate service respectively.

03. Repairs of Underground Plant.

Repairs of Underground Conduit, Underground Cable, Submarine Cable and Right-of-Way were apportioned on the basis of the book costs of the respective classes of plant devoted to interstate toll service and to all intrastate service respectively.

04. Repairs of Central Office Equipment.

Ordinary Repairs charged to this account were apportioned on the basis of the book cost of central office equipment devoted to interstate toll service and to all intrastate service respectively.

Rearrangements and Changes charged to this account were apportioned between exchange service and toll service on the basis of the average number of central office terminations of exchange and toll lines respectively.

The amount thus apportioned to toll service was divided between interstate toll service and intrastate toll service on the basis of the use of such central office equipment for the respective classes of toll service.

05. Repairs of Station Equipment.

This account was apportioned on the basis of the use of station equipment for interstate toll service and for all intrastate service respectively.

06. Repairs of Buildings and Grounds.

The charges to this account were apportioned on the basis of the use of buildings for interstate toll service and for all intrastate service respectively.

07. Station Removals and Changes.

This account was apportioned on the basis of the use of station equipment for interstate toll service and for all intrastate service respectively.

Account No.

608. Depreciation.

This account was apportioned on the basis of the use for interstate toll service and for all intrastate service respectively of the several classes of depreciable property.

340. Amortization of Landed Capital.

This account was apportioned on the basis of the use for interstate toll service and for all intrastate service respectively of exchange and toll right of way.

624. Operators' Wages.

This account was apportioned on the basis of the time devoted by switchboard operators to interstate toll service and all intrastate service respectively.

620. Central Office Superintendence.
625. Central Office Supplies and Expenses.
632. Pay Station Expenses.
633. Other Traffic Expenses.

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These accounts were apportioned on the basis used to apportion operators' wages.

640. Commercial Administration.
642. Advertising.
643. Canvassing.
647. Revenue Collecting.

These accounts were apportioned on the basis of the ratio of interstate toll revenues and all intrastate telephone revenues respectively to the total of such revenues.

644. Sublicensee Relations.

This account was apportioned between interstate toll service and all intrastate service on the basis of the ratio of interstate toll revenue and intrastate toll revenue respectively to total toll revenue.

646. Revenue Accounting.

This account was apportioned on the basis of a study of the cost of work performed in revenue accounting offices attributable to interstate toll service and to all intrastate service respectively.

Account No.

648. Pay Station Commissions.

This account was apportioned on the basis of the ratio of interstate toll revenue and total intrastate revenue respectively collected from public coin box telephones to the total of such collections.

a78

649. Directory Expenses.

For New York City the cost of the local city directories distributed to New York City subscribers was charged to intrastate exchange service exclusively. The cost of New York City directories distributed outside of New York City plus the total cost of the suburban directory was charged to interstate and intrastate toll service. For territory outside of New York City intrastate exchange service was charged with the estimated cost of such directories as would be required to meet the needs of exchange service only, the remaining directory expense being charged to interstate and intrastate toll service. The directory expense thus charged to toll service was apportioned between interstate and intrastate toll service on the basis of the ratio of interstate toll revenue and intrastate toll revenue respectively to total toll revenue.

660. General Office Salaries.
663. General Office Supplies and Expenses.
667. General Law Expenses.
668. Insurance.
669. Accidents and Damages.
670. Law Expenses Connected with Damages.
671. Miscellaneous General Expenses.

These accounts were apportioned on the basis of the ratio of total current maintenance, traffic and commercial expenses attributable to interstate toll service and all intrastate service respectively to the total of such expenses.

304. Uncollectible Operating Revenues.

This account was apportioned on the basis of the ratio of interstate toll revenues and all intrastate revenues respectively to the total of such revenues.

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305. Taxes Assignable to Operations.

This account was apportioned on the basis of the ratio of the book cost of plant devoted to interstate toll service and to all intrastate service respectively to the book cost of total plant.

Account No.

331. Rent Deductions for Telephone Offices.

This account was apportioned on the basis of the use of rented space for interstate toll service and all intrastate service respectively.

332. Rent Deductions for Conduits, Poles and Other Supports.

The portion of this account representing payments to the Empire City Subway Company for rental of ducts in Manhattan and Bronx was apportioned on the basis of the book cost of the underground cable plant devoted to interstate toll service and all intrastate service respectively in Manhattan and Bronx.

The remainder of this account was apportioned on the basis of the book cost of aerial cable and aerial wire devoted to interstate toll service and to all intrastate service respectively.

320. Rent Expense.

This account was apportioned on the basis of the ratio of book cost of buildings attributable to exchange and toll service respectively to the total book cost of buildings used to apportion rent revenue, Account 311, as explained above.

341. Miscellaneous Deductions from Income.

This account was apportioned on the basis of the ratio of interstate toll revenues and total intrastate revenues respectively to the total of such revenues.

*a*80

417. Other Deductions from Surplus.

The part of this account applicable to operations was apportioned on the basis of the ratio of the book cost of plant devoted to interstate toll service and to all intrastate service respectively to the book cost of total plant.

527. Licensee Revenue—Dr.

This account was apportioned on the basis of the relation of interstate toll revenue and total intrastate telephone revenues respectively to the total of such revenues.

That I have read the affidavit of Jacob S. Wiley made herein, also verified on the 29th day of March, 1922, and personally participated in making the separation referred to in the said affidavit between the interstate and intrastate property, revenues and expenses of the plaintiff.

That the said separation was made upon the basis set out in my foregoing affidavit, and the results reached in making the said separation are, in my opinion, substantially correct.

ANDREW SANGSTER.

Subscribed and sworn to before me this 29 day of March, 1922.
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a81 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of George W. Whittemore as to Value.

STATE OF NEW YORK,
County of New York, ss:

George W. Whittemore, being duly sworn, deposes and says that he resides in the Borough of Brooklyn, City and State of New York; that he is fifty-three years of age and in the year 1892 was first employed in telephone engineering work and in 1899 was employed in that work by the Bell Telephone Company of Buffalo and was continuously employed by that Company until the year 1910, when he entered the employ of the New York Telephone Company and he has since been employed continuously by the plaintiff Company in engineering, appraisal and construction work.

That he is thoroughly familiar with telephone properties and with the work, labor and materials entering into the construction of the same and with the units of cost thereof and in the regular course of his employment he has been engaged in making appraisals of telephone properties situated in the States of New York, New Jersey, Maryland, Virginia, West Virginia and Ohio and in the Dis-
a82 trict of Columbia, the aggregate value of which runs into hundreds of millions of dollars, and during the last twelve or thirteen years he has been giving particular attention to the analysis of all costs incurred by telephone companies in all work of construction performed by them.

That he is thoroughly familiar with the entire property belonging to the plaintiff company in the State of New York and devoted by it to the furnishing of intra-state telephone service in said State, and for some years past has been engaged in the making and keeping of an inventory thereof. That for several months he has been employed with a large force under his direction in making an appraisal of said property and in the course of such employment he has made a valuation as of the present time of all of the property used or useful

in and devoted exclusively by the plaintiff to the rendition of its intra-state telephone service in the State of New York.

That in arriving at the present fair value of said property of plaintiff hereinafter stated, he has taken into consideration among others the following facts and matters:

(*a*) The original cost of said property as stated in the affidavit of Jacob S. Wiley, the chief accounting officer of the plaintiff, verified the 29th day of March, 1922, and the fact that said cost includes the cost of a large amount of property, approximately fifty per cent of the total, which was constructed prior to the year 1914, before the increases in labor and material costs due to conditions prevailing during and since the World War became operative.

(*b*) The cost of reproduction new of said property. By using the actual quantities or units of property making up the said plant used or useful and devoted exclusively to the rendition of in-
*a*83 trastate telephone service by the plaintiff in the State of New York and applying thereto the prices of materials and labor current as of this time, deponent has determined the cost of reproduction of such property to be in excess of $225,000,000 for The City of New York and in excess of $117,000,000 for the State of New York exclusive of The City of New York, making a total in excess of $342,000,000 for the entire State of New York. If there be added to the last mentioned figure a reasonable allowance for working cash capital, materials and supplies, and going concern value, said cost of reproduction of the entire property new is in excess of $373,000,000. In ascertaining the cost of reproduction new, above stated, deponent has used prices which he regards as moderate and which are considerably lower than the prices prevailing during and since the World War; a striking example being copper, where he has used a price at least thirty per cent lower than the average price of that metal for twelve years last past. In the case of lead he has used the present price, which is from twenty to twenty-five per cent lass than the average price of that metal for the past twelve years. The prices deponent has used for both copper and lead are less substantially than the prices it would be necessary to use if an effort were now made actually to reproduce the property of the plaintiff. Lead and copper are the principal materials used in the manufacture of the cables and wires which have been installed in the plaintiff's plant at a cost of more than $69,000,000 as shown by its books, and form a large part of the plaintiff's property devoted exclusively to its said telephone service.

Said telephone property of the plaintiff is and has been at all times during this deponent's employment by the plaintiff in a 100% service condition, but this deponent has from time to time observed, in-
spected and examined the said property and parts thereof
*a*84 and in a general way is familiar personally with the present physical condition of said property. Deponent has taken into consideration in arriving at the present fair value of said property such deterioration in the property as actually exists.

(*c*) Appraisals made of the lands and buildings owned by the plaintiff throughout the State of New York as determined by disinterested appraisers familiar with real estate values in the various localities in which the parcels of such lands and buildings are located, which appraisals show an average value thereof of 67% over the costs of such lands and buildings as shown on the books of the plaintiff.

(*d*) Based upon his experience in examining and appraising the properties and operations of various other telephone corporations and his knowledge of plaintiff's actual requirements over many years for working cash capital and materials and supplies necessary in the rendition of its intra-state telephone service in the State of New York, deponent has estimated the amount reasonably required by plaintiff for such purposes at not less than $13,500,000.

That after giving careful consideration to all of plaintiff's property, its history, location and character, and to the factor usually called "going concern value," to all the factors and matters above enumerated and to all other factors within deponent's knowledge affecting its value, it is the opinion of the deponent that the fair present value of the entire property of the plaintiff used or useful and exclusively devoted by it to furnishing intra-state telephone service in the State of New York is in excess of $218,000,000 in The City of New York and in excess of $105,000,000 in the State of New York, exa85-86 clusive of said City, making a total present fair value of said property in excess of $323,000,000 in the entire State of New York.

Deponent further says that in arriving at such present fair value he has made no allowance whatever for the value of any of plaintiff's franchises or rights to own and operate a telephone system in said City or in any part of the State of New York.

That as a basis for his appraisal as aforesaid deponent has apportioned the property between inter-state and intra-state service in accordance with the separation set forth in the affidavit of Andrew Sangster, verified the 29th day of March, 1922.

(Sd.) GEORGE W. WHITTEMORE.

Subscribed and sworn to before me this 29th day of March, 1922.

[SEAL.] (Sd.) LINCOLN JONES,
Notary Public, Kings Co. No. 38.

Cert. Filed in N. Y. Co. No. 66.

a87 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Halbert P. Gillette.

STATE OF NEW YORK,
County of New York, ss:

Halbert P. Gillette, being duly sworn, deposes and says:

That he is 52 years of age; that he resides in Chicago, Illinois; that he is a consulting engineer; that he was graduated from the Engineering Department of Columbia University in the year 1892 and has practiced and followed the profession of civil engineering ever since graduation; that he was Assistant New York State Engineer in the years 1896-7 and following that was engaged in the contracting business in the State of New York until 1902; that in 1906 became Chief Engineer of the Railroad Commission of the State of Washington and appraised the railroads in that State during the years 1906-7; that since that time he has had considerable experience appraising various properties embracing $750,000,000 worth of public utilities inclusive of telephone properties, in the States of Washington, Oregon, California, Nevada, Texas, Pennsyl-
a88 vania, New York, New Jersey, Vermont and Massachusetts; among these was the appraisal of the telephone system of The Bell Telephone Company of Pennsylvania, a corporation furnishing service throughout the State of Pennsylvania, with a property conservatively valued at over $100,000,000 in the year 1920, that he was a member of the committee selected to appraise the property of the New York Telephone Company in the year 1914; that the committee of which he was a member made a detailed inventory of all kinds of property owned by said Company in the States of New York and New Jersey and that said property was appraised as of December 31, 1914; that in an investigation by the Joint Committee of the Senate and Assembly to investigate and examine into telephone, telegraph and other forms of electrical communication, he testified, on February 22, 1915, as to the fair value of the telephone property of the New York Telephone Company in the City of New York as of December 31, 1914, and that the Public Service Commission, Second District, State of New York, shortly thereafter found a value substantially in accord with the value of the property as testified to by him; that he also testified and submitted an estimate of value of the property of the New York Telephone Com-

pany in the Buffalo local area in a proceeding before the Public Service Commission, Second District, State of New York, entitled "In the matter of the complaint of the city of Buffalo, by George S. Buck, Mayor, against New York Telephone Company—Case No. 6427," in the year 1920; that he also appraised the property of the New England Telephone & Telegraph Company in the State of Vermont in the year 1915; that through his work in connection with the aforesaid appraisal of the New York Telephone Company's property in the year 1914 as of December 31, 1914, and through the Buffalo local area appraisal above-mentioned, he became
a89 familiar with the property of the New York Telephone Company, with its methods of accounting, and with the costs of labor and materials used in telephone construction in the State of New York; that he has familiarized himself with the additions which have been made to the said Company's property since December 31, 1914.

That for more than twenty years he has specialized in the cost of construction, operation and maintenance of public utilities and public works.

That he has written a great many articles and several books on the subject of construction costs, notably his Handbook of Cost Data and his Handbook of Mechanical and Electrical Cost Data, the latter being a book in joint authorship with R. T. Dana; that he has published numerous articles on cost accounting and engineering economics; that he has made extensive studies of price and wage levels and has published many articles thereon.

That, taking into account his aforesaid appraisal of the New York Telephone Company's property as of December 31, 1914, and his recent studies of the additions made to that property up to December 31, 1921, and taking into consideration the changes in prices of telephone plant and materials and construction wages, and such prices at present, he estimates that the approximate cost of reproducing the New York Telephone Company's property in the State of New York used or useful in and devoted exclusively to the rendition of its intrastate telephone service as of the present time, would be at least $350,000,000, inclusive of materials and supplies but exclusive of working cash capital and items such as cost of establishing the business, going value and franchise value; that in arriving at the said estimate of reproduction cost as of the present time he has excluded that part of the plaintiff's plant devoted to the
a90 rendition of its interstate toll service in accordance with the bases of separation shown by the affidavit of Andrew Sangster, verified the 29th day of March, 1922; that a reasonable allowance for working cash capital, not included in the above $350,000,000, would be at least $10,000,000. That in his said estimate of $375,000,000 as the value of said property at the present time he has taken the appraised value of land, totaling $12,500,000 in round numbers, as given by disinterested local real estate appraisers.

That the prices of raw materials used in telephone construction in the State of New York are now as low on the average as they probably will be during the year 1922, and that there is strong

likelihood that they will average higher during the rest of the ye
than at present.

That deponent's opinion in regard to said prices is based on t
following considerations: Of the raw materials that are used
telephone plant construction copper is the material most extensive
used and its price is now below the pre-war average price. Accordi
to statistics published by the United States Bureau of Labor t
average wholesale price index or price level was, for February, 192
51% above the average for the year 1913, and that for elev
months this wholesale commodity price level has scarcely change
that the peak of this wholesale commodity price index was reach
in May, 1920, and that a very rapid decline occurred for elev
months thereafter, reaching the present level in April, 1921, whe
it has remained; that the price level of building materials, oth
than metals, followed the same history and has now been statio
ary, practically, for eleven months; that average union wages
the building trades in New York City have not changed for mo
than a year; that average wages in 1,648 factories in New Yo
State, as published by the New York State Department
a91 Labor, have declined only 12% in the past twelve mont
and for four months have not declined at all; the avera
wages paid by the New York Telephone Company at the prese
time for construction purposes are no higher, proportionately, th
union labor wages in the building trades and the average facto
wages in the 1,648 New York State factories above-mentioned.

That a study of wage levels made by deponent and published
Engineering and Contracting on August 3, 1921, shows that
the past eighty years in the United States average daily wages ha
been proportional to two factors: first, per capita money, and secon
rate of money turnover or circulation; that the rate of money c
culation rises about 15% in boom times and falls about 15% in ha
times, always returning to a normal.

That in consequence of this moderate oscillation from the norm
the controlling factor in establishing wage levels over a period
years is the per capita money; that the per capita money is now 50
above the amount that it was in the year 1913; that the United Stat
has 40% of all the gold in the world; that all the great industri
nations of the world are so deeply indebted to the United States th
they are not likely to recover much, if any, of this American gold f
several years; that the per capita gold in the United States is 80
above that in 1913; that in a nation having a gold standard the i
crease in per capita money tends to exceed the increase in per capi
gold, hence, that our present per capita money will probably increa
during the next few years.

That wages constitute about 75% of the ultimate cost of a
products and services, capital receiving about 25%, hence, that
wages rise prices of commodities must rise, unless efficiency of pr
duction increases; that per capita efficiency of production in Ame
ica has been calculated by deponent for every year for th
a92 past sixty years and that although this efficiency of produ
tion has ordinarily shown a steady rise it has never risen at

better rate for a decade than 2% per annum, hence, that there is no probability that the average commodity price level will decrease faster than 2% annually, due to a general increase in efficiency of production; that in the construction trades the efficiency of workmen is now practically what it was in 1914 and that the same holds true of manufacturing in general, hence, that over short periods of time, such as two or three years, the controlling factors in determining commodity price levels are the same as those that determined wage levels; that the significance of these economic facts in this connection is this: the cost of the labor and material required for reproducing the plant of the New York Telephone Company is now probably lower than it will be during the next year or two.

That the only comparable period of great changes in price and wage levels in America was the Civil War period and the years that immediately followed; that following the close of the Civil War in 1865 there was a rapid decline in commodity price levels for two years, the low point being reached in 1867; that from this low mark there was a substantial rebound in 1868; that thereafter the decline was relatively slower and that not until 1884 was the prewar price level reached again; that building material prices following the Civil War declined even more slowly than did the average of all other commodity prices; that in 1873 the level of building material prices was 72% above the level in 1860, and that the level of wages in 1873 was 67% above the wage level in 1860; that although the wage level following the panic of 1873 declined slowly it never reached a point lower than 42% above the level of 1860, and that thereafter the average level steadily rose; that the wage movement during
a93-94 and following the Civil War was quite similar to that experienced in this country during and following the recent World War; that the same factor that brought the decline in wages to an end after the Civil War, namely, the high per capita money, has similarly brought a halt to the recent decline in wages; that the existence of flexibility in the present American currency, due to the Federal Reserve Banking System, has not affected the law that wages and price levels tend to change with change in per capita money but has simply exemplified the truth of that law; in fact this law of dependence of wage and price levels upon per capita money has been as completely exemplified during the years 1914-1922 as it was during the years 1861-1869.

HALBERT P. GILLETTE.

Subscribed and sworn to before me this 29th day of March, 1922.
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co. No. 38.

Cert. Filed in N. Y. Co. No. 66.

a95 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Harry M. Addinsell.

STATE OF NEW YORK,
County of New York, ss:

Harry M. Addinsell, being duly sworn, says that he resides at Locust Valley, New York, and is an investment banker. That he is a director of Harris, Forbes & Company, New York City, and has been with that investment house for sixteen years continuously with the exception of two years during which time he was in the World War. That said house is a member of the Investment Bankers Association and that deponent was formerly a Chairman of the Public Utility Securities Committee of that Association.

That Harris, Forbes & Company deals exclusively in investment securities of the classes offered to what are known in banking circles as the conservative investor and it therefore confines its purchases and sales of securities to those which it considers to be conservative investments and is, and for many years has been, one of the largest houses handling public utility securities. That it is the practice of deponent's said house to make an investigation
a96 of the operations of any public utility before it deals in the securities of such utility; that when a proposal is made to it to handle such securities it first makes a preliminary investigation of the facts and figures relating to the company generally in order to determine whether or not there is a safe basis for the bonds or other securities which it is asked to handle, and if that matter is determined satisfactorily the investigation is continued by having an engineering examination made by competent engineers and accounting examinations made by expert accountants.

That Harris, Forbes & Company and its predecessor, N. W. Harris & Co., have been in business for about forty years and during that period have had occasion to make extensive investigations into the operations, properties, earnings and securities of a great many electric, gas, telephone, street railway, water and other public utilities.

That it is the opinion of the deponent that a public utility such as the plaintiff should earn an annual return of not less than 8% (after providing for depreciation) upon the fair and reasonable value of its property used or useful in the rendition of its service in order to place

securities upon a parity with other investments competing for
ds in the market.
That in order to make the securities of a public utility saleable, it
ecessary that public confidence in such securities be established
maintained. The investors must have reasonable assurance of
integrity of the investment and the safety of their money, and
st be afforded a return at least equal to the returns which they
ld obtain through other available investments of similar desir-
ity.
That the cost to public utilities of borrowed money, where the
ns are adequately secured and where there is a fixed obligation to
return the money borrowed at a definite date, is obviously less
-98 than the fair return necessary to induce the investment of
funds that are to be invested at the risk of the business.
at the cost of borrowed money to public utilities during the last
ee years has run as high as 10% for short term loans and has
raged over 7% for long time money. That at present such cor-
ations cannot obtain money on long time loans, even though ade-
tely secured, at less than an average cost of approximately 6%.
at prudence and conservatism dictate that only a proportion of the
ital requirements of such corporations should be raised by the
of bonds or other loans. That it is fundamental that public
ities which expect to continue permanently in business and which
required continuously to increase their investments in order to
et the public service requirements imposed upon them must have
narket for their stocks, and their stocks are not saleable to in-
ors unless it can be demonstrated that the company offering such
ks is earning and will continue to earn at least a reasonable re-
n upon the value of its property devoted to the public use. That
re is active competition among utility corporations, industries and
er businesses for the surplus funds which are at any time avail-
e for new investments, and plaintiff, like the others, is compelled
neet this competition and to offer inducements to investors equal
hose offered by others at the same time.

HARRY M. ADDINSELL.

Subscribed and sworn to before me this 29th day of March, 1922.

[SEAL.] KENNETH C. WALFORD,
Notary Public, Kings Co., No. 120.

Cert. filed in N. Y. Co. No. 300.
Register's Office, Kings Co. No. 2107.
Register's Office, N. Y. Co. No. 2225.
Commission expires March 30, 1922.

a99 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Arthur D. Welch.

STATE OF NEW YORK,
County of New York, ss:

Arthur D. Welch, being duly sworn, deposes and says that he is forty-three years of age, a graduate of the University of Vermont, Class of 1902, with a degree of Bachelor of Science and electrical engineering.

That he has been employed by the New York Telephone Company and one of its predecessor corporations, The New York and New Jersey Telephone Company, which operated in the City of Brooklyn, Long Island and Staten Island until the year 1909, for more than nineteen years. That since April 1, 1920, he has been General Commercial Superintendent of the plaintiff and prior thereto was for thirteen years General Commercial Engineer of the plaintiff. That while commercial engineer and in his present position as General Commercial Superintendent he had and has charge and supervision of the making of schedules of rates for the plaintiff and the preparation of studies in relation thereto and the study of the
a100 effect of rates on the revenues of the company, and that he is familiar with all the rates and charges which are made by the plaintiff for the telephone service and facilities furnished by it and with the schedules of such rates which are now and have been from time to time filed by the plaintiff with the Public Service Commission of the State of New York and its predecessor Public Service Commission of the Second District, and with the changes in the rates so filed which have been made in accordance with the orders of said commissions. That the rates which the plaintiff now has in effect for telephone service in the City and State of New York have been continuously in effect since July 1, 1921, except that in the City of Buffalo slight decreases in exchange rates were made on November 1, 1921, pursuant to an order of the Public Service Commission dated October 27, 1921, the amount of which decreases were equal to only 1/33 of 1% of the total exchange revenues of the Company in the State of New York for the year 1921. That deponent is familiar with all the orders made by the Public Service Commission of the State of New York and by its predecessor the Public Serv-

ice Commission of the Second District which are referred to in the affidavit of Frankland Briggs, verified the 29th day of March, 1922, which deponent has read, including the recent orders of the said Public Service Commission dated March 3, 1922, in cases 377 and 7720, directing reductions on and after April 1, 1922, in certain exchange rates charged for exchange service in the City of New York and in the part of the State of New York outside of the said City. That he has made a careful and detailed estimate as to the effect on the revenues of the Company in the event that the rates prescribed by said orders should become effective, taking into consideration the probable growth in the number of telephones which will be in service during the year 1922, and if such reduced rates should a101-102 in fact become effective they would cause a large and substantial reduction in the revenues of the plaintiff, and such reduction would not be less than $2,150,000 per annum in the City of New York and not less than $750,000 per annum in that part of the State of New York which is outside of said City, and would cause a total reduction in the revenues of the plaintiff in the State as a whole of not less than $2,900,000.

That if the rates prescribed by said orders of the Public Service Commission of March 3, 1922, had been in effect during the whole of the year 1921 and had been applied to the exchange service furnished by the plaintiff during that year, the revenues of the plaintiff in that year in the State of New York would have been reduced by not less than $1,000,000 in The City of New York, and not less than $700,000 per annum in the cities, towns and villages of the State of New York outside of the City of New York, and would have caused a total reduction in the revenues of the plaintiff from its said exchange service in said year of not less than $1,700,000 in the State as a whole.

A. D. WELCH.

Subscribed and sworn to before me this 29th day of March, 1922.
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a103 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Frankland Briggs.

STATE OF NEW YORK,
County of New York, ss:

Frankland Briggs, being duly sworn, deposes and says that he is Attorney in Charge of Commission Matters of the New York Telephone Company, plaintiff in this suit. That he has charge for said company of all matters and proceedings before the Public Service Commission of the State of New York, which commission has been in office since on or about May 1, 1921, and prior to said date had charge of all such matters and proceedings before the predecessor of that commission, the Public Service Commission, Second District, of the State of New York, which commissions have had general jurisdiction and powers of supervision and regulation over the plaintiff company and other telephone and telegraph corporations since the year 1910.

That he is familiar with the proceedings before said commissions relating to the rates and charges of said company in the State of New York. That certain orders have been issued relative to rates in The City of New York and certain other orders relative to rates
a104 in the territory operated by the plaintiff in the State of New York outside of said city and in the state as a whole.

Part I.

Rate Changes and Commission Orders in the City of New York.

That the said Public Service Commission, Second District, did on March 30, 1915, in a proceeding entitled "In the Matter of Investigation of rates and charges for service rendered by the New York Telephone Company within The City of New York (Case No. 4089)" make a general order effective July 1, 1915, establishing ten message rate zones in said The City of New York fixing schedules of maximum rates for each zone and maximum toll rates between zones, directing that certain flat rates then in force should continue and covering certain other details, as more fully appears in the copy of said order attached to the bill of complaint as Exhibit A. That on

July 1, 1915, plaintiff put into effect as its rates the maximum rates permitted by said order.

That it was provided in said order that said rates should remain in force for a period of three years and thereafter until further order of the commission.

That during the period commencing August 1, 1918, and ending July 31, 1919, the property of the plaintiff was in the possession of and under the supervision and control of the United States Government pursuant to a resolution of Congress and proclamation of the President, during which period no changes were made in the rates in effect in The City of New York.

That the said Public Service Commission, Second District, did on September 16, 1919, in a proceeding entitled "In the Matter
a105 of Investigation of rates and charges for service rendered by the New York Telephone Company within The City of New York (Case No. 6974)" make an order effective October 1, 1919, modifying the order of March 30, 1915, by providing for a discount of 8% from the rates and charges prescribed in said order. By the terms of said order of September 16, 1919, the rates so prescribed were to continue in effect for the period of one year or thereafter. That a copy of said order is attached to the bill of complaint as Exhibit B. The plaintiff on and after October 1, 1919, put into effect the maximum rates permitted by said order.

The plaintiff on or about August 28th, 1920, filed a petition with the Public Service Commission, Second District, praying for the consent of said Commission to the establishment on and after October 1, 1920, of a new schedule of rates for telephone service in The City of New York, more fully set forth in said petition. That said Commission held hearings on said application on the 18th day of October, 1920, and on other dates subsequent thereto, and at such hearings the plaintiff offered testimony, proofs and exhibits in support of its application. Hearings in said proceeding are being held from time to time and the matter is still pending and undisposed of, the taking of testimony not having yet been completed. That during the pendency of such proceeding and on or about February 23, 1921, the plaintiff applied to the Public Service Commission, Second District, for its consent to increase its rates beyond the maximum theretofore fixed by said Commission and the said Commission on March 17, 1921, made an order effective April 1, 1921, in a proceeding entitled as follows: "Petition (or complaint) of New York Telephone Company, under subdivision 1, Section 97, Public Service Commissions Law, in respect to increasing rates, charges, tolls and rentals to be charged by it for telephone service in New York
a106 City (Case No. 7720)." In said order it referred to the previous orders of March 30, 1915, and September 16, 1919, and to the greatly increased operating expenses of the plaintiff and other facts which indicated that the plaintiff was entitled to an immediate increase in its rates and charges. Said order provided that pending the further continuation of said proceeding and without affecting the final determination thereof the commission did consent that from and after April 1, 1921, and until further ordered

in the premises the exchange rates of plaintiff company for telephone service in The City of New York should be increased by the elimination of the 8% discount specified in said order of September 16, 1919, and by the addition after such elimination of 20% of all rates and charges for such service and facilities prescribed by said order of March 30, 1915, a copy of which said order is attached to the bill of complaint as Exhibit C. Plaintiff on April 1, 1921, put into effect the maximum rates permitted by said order.

That the Public Service Commission of New York did on June 16, 1921, make an order effective July 1, 1921, which provided that the said order of March 17, 1921, be modified and that the Commission consent and authorize that from and after July 1, 1921 and until its further order in the premises, the rates of said plaintiff company for exchange telephone service in said The City of New York be temporarily determined by the elimination of said 8% discount specified in said order of the Public Service Commission, Second District, dated September 16, 1919, and by the addition after such elimination of 10% to the rates and charges for exchange telephone service and facilities determined and fixed by said order of the Public Service Commission, Second District, dated March 30, 1915. That a copy of said order of June 16, 1921, is at-
*a*107 tached to the bill of complaint and marked Exhibit D. That plaintiff put into effect on July 1, 1921, the maximum rates permitted by said order.

That on March 3, 1922, the commission made a further temporary order providing that from and after April 1, 1922, and until its further order in the premises, the rates of the plantiff Company for telephone exchange service in The City of New York should be temporarily determined by the elimination of the 8% deduction specified in the said order of the Public Service Commission, Second District, dated September 16, 1919, and by the addition after such elimination of 5% to the rates and charges for exchange telephone service and facilities determined and fixed by said order of the Public Service Commission, Second District, dated March 30, 1915. That a copy of said order is attached to the bill of complaint, marked Exhibit E.

Part II.

Rate Changes and Commission Orders in the State of New York Outside of the City of New York and in the State as a Whole.

That, as heretofore stated, the property of the plaintiff company was under the supervision and control of the Federal Government during the period from August 1, 1918, to July 31, 1919, and that while under such supervision and control, on May 1, 1919, certain schedules of rates increasing those previously in force were put into effect by the Postmaster General of the United States.

That on December 1, 1919, certain schedules of increased rates theretofore duly filed by the plaintiff with the Public Service Commission, Second District, pursuant to the provisions of Section 92

of the Public Service Commissions Law, became effective gen-
108 erally throughout the State of New York, except in The City of New York and a few minor instances where rates had reviously been prescribed by orders issued by said commission. ubsequently complaints against such increased rates were filed with ie said Commission by more than one hundred forty cities, towns nd villages of said State alleging that such rates were unreasonable nd unjust.

That while such complaints were still pending and undisposed of efore said Commission, the Company filed schedule of rates effect- e September 1, 1920, further increasing the rates made effective ecember 1, 1919.

That early in the year 1920, the Public Service Commission, Sec- nd District, commenced the holding of hearings upon the com- laints filed by the Cities of Syracuse and Buffalo respecting the ites charged by plaintiff in those cities, and hearings in these cases ere finally completed before said Commission but were not deter- ined by said Commission prior to its being superseded by the pres- nt Public Service Commission. The present Commission heard rguments in such proceedings, and on August 4, 1921, made an rder dismissing the complaint of the City of Syracuse on the ground hat the rates complained of were not unjust or unreasonable, and n October 27, 1921, it made an order reducing to some extent the ites charged by plaintiff in the City of Buffalo.

That on November 10, 1921, the said present Public Service Com- ission made an order commencing on its own motion a general nvestigation as to the rates throughout the State, including The City f New York, the scope of the investigation being more fully set rth in the copy of the order hereto attached and made a part ereof.

That a number of hearings have been and are still being
109 held from time to time in the proceeding commenced by said order, and said proceeding is now pending and undeter- ined.

That on March 3, 1922, the said Public Service Commission of ew York made an order in the last mentioned proceeding that it ppearing to the satisfaction of the Commission that the public nterest required a change in the rates for telephone service charged y the New York Telephone Company within the State of New York including the City of New York) temporarily and pending a final etermination of the rates, charges and rentals to be thereafter de- anded, certain rates as prescribed in said order be established as the ites to be charged from and after April 1, 1922, in the various cities, wns and villages in said State of New York specified in said order, ich rates to remain in force and effect pending a final determina- on as to the rates, charges and rentals thereafter to be charged until further order of the Commission. That said order further ecifically povides that "All rates, charges and rentals applying to ny and all other service furnished by said New York Telephone ompany to be and remain as stated in the Company's schedules of ites, rentals and charges for service." That a copy of said order is ttached to the bill of complaint and marked Exhibit F.

That by the terms of said order the rates now charged by the Co pany outside The City of New York are substantially reduced amount.

Part III.

Rates Now in Effect.

That the rates now in effect throughout the State of New Yo including The City of New York, have been continuously in eff from and after July 1, 1921, with the exception of certain chan made in the local exchange rates in the City of Buffalo
a110 prescribed by said order of the Public Service Commiss dated October 27, 1921, which said changes were comp atively slight in amount and affected less than one-half of one cent of the total gross revenues of the plaintiff company in the St of New York from its exchange service.

FRANKLAND BRIGGS

Subscribed and sworn to before me this 29th day of March, 19
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No. 38

Cert. Filed in N. Y. Co. No. 66.

a111 *Exhibit Attached to Affidavit of Frankland Briggs.*

State of New York,

Public Service Commission.

At a Session of the Public Service Commission Held in the City New York on the 10th Day of November, 1921.

Present:

William A. Prendergast,
Chairman;
William R. Pooley,
Charles Van Voorhis,
Oliver C. Semple,
Charles G. Blakeslee,
Commissioners.

In the Matter of the Hearing on Motion of the Commission as Rates, Charges, and Rentals and the Regulations and Practi Affecting Rates, Charges and Rentals of THE NEW YORK TE PHONE COMPANY [Case No. 377].

On the motion of the Commission,
It is Ordered:

(1) That a hearing be had as to the rates, charges, tolls a rentals, demanded, exacted, charged or collected by the New Y

Telephone Company, within the State of New York, for the transmission of messages or communications by telephone, and for the rental or use of any telephone line, receiver, transmitter instrument, wire, cable, apparatus, conduit, machine, appliance or device or any a112 extension or extension system; and as to the rules, regulations and practices of said New York Telephone Company affecting such rates, charges, rentals or service; to the end that if the same or any part thereof be unjust, unreasonable, unjustly discriminatory or unduly preferential, or anywise in violation of law, or if the maximum rates, charges or rentals chargeable by said New York Telephone Company are insufficient to yield reasonable compensation for the service rendered, the Commission may determine the just and reasonable rates, charges and rentals to be thereafter observed and in force as the maximum to be charged, demanded, exacted or collected for the performance or rendering of the service specified and fix the same by order;

(2) That such hearing be held at the office of the Commission, No. 91 State Street, Albany, New York, on the 29th day of November, 1921, at 10 a. m.

(3) That notice of the time and place of such hearing be given, by the secretary of this Commission, to said New York Telephone Company, and to the complainants in proceedings as to any rates, charges, or rentals of said New York Telephone Company, now pending before this Commission undetermined, and others.

By the Commission.
[SEAL.] FRANCIS E. ROBERTS,
Secretary.

a113 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of George W. Whittemore as to Depreciation.

STATE OF NEW YORK,
County of New York, ss:

I, George W. Whittemore, being duly sworn, on oath state:

That I am the George W. Whittemore who made the affidavit herein as to value verified March 29th, 1922.

That the property used by the plaintiff in the rendition of its service is classified under the system of accounts prescribed by the

Interstate Commerce Commission, the so-called depreciable property being shown under the following items, with the account numbers as indicated:

212. Buildings.
221. Central Office Telephone Equipment.
222. Other Equipment of Central Offices.
231. Station Apparatus.
232. Station Installations.
233. Interior Block Wires.
234. Private Branch Exchanges.
235. Booths and Special Fittings.
241. Exchange Pole Lines.
242. Exchange Aerial Cable.
a114 243. Exchange Aerial Wire.
244. Exchange Underground Conduit.
245. Exchange Underground Cable.
246. Exchange Submarine Cable.
251. Toll Poll Lines.
252. Toll Aerial Cable.
253. Toll Aerial Wire.
254. Toll Underground Conduit.
255. Toll Underground Cable.
256. Toll Submarine Cable.
261. Office Furniture and Fixtures.
262. General Shop Equipment.
263. General Store Equipment.
264. General Stable and Garage Equipment.
265. General Tools and Implements.

That, in the rendition of its service, the plaintiff uses up the property of the classes indicated in the foregoing classification.

For instance, a switchboard, which under the above classification would come under the head of central office equipment, Account No. 221, will have a certain useful life in the rendition of the company's service, at the expiration of which it will be discarded.

Among the causes which end the useful life of any piece of depreciable property are natural wear and tear, obsolescence, the fact that it becomes inadequate for the service required of it, public requirements, that is, requirements of public authorities that render necessary changes in plant, storms, fires and other casualties.

When property is discarded, usually more or less salvage is realized from it. Under the said accounting rules and practices, the term "net salvage" means the net amount realized from the discarded property; that is, the amount realized from it, less the cost of removing and disposing of it.

The amount of this net salvage will obviously vary radically with the different classes of property. For instance, if it were
a115 necessary to take down an old pole line, probably the cost of taking the pole line down would amount to more than the poles could be sold for so that here the net salvage would be a minus amount. On the other hand, in the case of the switchboard, the ne

salvage would be a substantial amount, although the fact that the relatively large item of labor incident to its original installation would be entirely lost, would tend to minimize such net salvage.

The cost of depreciable property used up in the rendition of the plaintiff's exchange service, less the net salvage recovered on account of this property when it is discarded, is a part of what it has cost the plaintiff to render this service during the term of the useful life of the property in question.

Under the said accounting rules and practices and under the accounting rules of the Public Service Commission of the State of New York, the plaintiff is required to charge this cost or expense to its operating expenses, except certain minor items charged initially to certain clearing accounts, in equal periodical increments during the useful life of the property, and this is done month by month. At the time that this charge is made to operating expenses a corresponding credit is made to the account entitled "Reserve for Accrued Depreciation."

When a piece of property is discarded, this account "Reserve for Accrued Depreciation" is charged with the difference between the cost of this property and the net salvage recovered from it. At the same time the proper fixed capital account is reduced by the amount of the original cost of the property in question.

This cost of rendering plaintiff's service is treated in the accounts in the same manner in which other cost items extending over a considerable period are treated. In the cases of taxes covering a year, or interest covering a fixed period, or expenses of financing
a116 and bond discounts covering a number of years, the total expense is ascertained and is then charged to the operating expenses and credited to the account entitled "166—Taxes Accrued," or "167—Accrued Liabilities Not Due," as the case may be, against which account the payment when made is charged in a lump. In none of these cases is any specific reserve actually set aside.

While the depreciation account is entitled "Reserve for Accrued Depreciation," no reserve in the sense of a fund set aside for this specific purpose is maintained. The moneys taken out of earnings and represented by these charges to operating expenses and credits to this account go into the general funds of the plaintiff and find their way into property and plant owned by it so that as parts of its investment are retired, they are replaced by other investments in a like amount and its capital is maintained unimpaired.

The factors which determine the amount which should be periodically charged to the operating expenses and credited to the account "Reserve for Accrued Depreciation" are the original cost of the property, the net salvage, the term of its useful life, and the coefficient of safety which good business management requires in cases where expense items are to be met, the amount of which cannot be exactly known in advance. The original cost is readily and definitely ascertainable. What will be the useful life of any piece of telephone property and what will be the net salvage recovered upon the termination of this life, are factors looking to the future

which must necessarily be based upon estimates founded upon the judgment of those educated in the business applied to the recorded experience of the company over a long series of years.

While the exact time when any specific piece of property will go out of use may not be accurately determinable, the average
a117 useful lives of the various classes of property are factors which may be fixed with substantial accuracy and this is true also as to the determination of the net salvage. These determinations should be reviewed from time to time and where there are changes in conditions or in the character of the plant which appear to be more than temporary so as to affect substantially these averages, corresponding adjustments should be made.

During the last ten years it has been part of my duty to study, continuously, the facts bearing upon these factors of useful life and net salvage, for use as a basis for revisions of charges to operating expenses and credits to account "Reserve for Accrued Depreciation" when changed conditions made same proper; and that the last such revision, made effective as of August 1, 1919, produced a reduction in the composite rate previously in effect, when applied to the present depreciable property in the State of New York, from 6.53% to 5.81%.

That in the contract made between the Postmaster General and the plaintiff in connection with the federal possession, control and operation of the plaintiff's property during the year from August, 1918, to August, 1919, the comparable composite rate for the charges to operating expenses and clearing accounts and credits to the account "Reserve for Accrued Depreciation" was fixed at 5.72%, except that the item of Right of Way, Account No. 207, was not included in this composite rate but was carried separately with a depreciation rate of 2.55%. This item is small and would not materially affect the said figure of 5.72%. This composite figure was applied to plaintiff's total depreciable property during the year of federal operation.

That upon the termination of federal operation on August 1, 1919, plaintiff put into effect the rates of depreciation shown
a118 below and these rates have been continued in effect up to this time:

Depreciation Rates in Effect Since August 1, 1919.

212.	Buildings	2.6
	Cable, Aerial—	
242.	Exchange	7.0
252.	Toll	5.0
	Cable, Underground—	
245.	Exchange Main	3.0
245.	Exchange, Subsidiary	6.0
255.	Toll	2.8

	Cable, Submarine—	
46.	Exchange	8.0
56.	Toll	8.0
21.	Central Office Equipment	9.0
22.	Other Equipment of C. O.	9.0
	Conduit, Underground—	
44.	Exchange, Main	2.0
44.	Exchange, Subsidiary	4.0
54.	Toll	2.0
61.	Office Furniture and Fixtures	10.0
	Pole Lines—	
41.	Exchange	9.0
51.	Toll	6.1
07.	Right of Way—	
	Exchange	6.0
	Toll	3.0
	Station Equipment—	
31.	Station Apparatus	6.0
32.	Station Installations	...
33.	Interior Block Wires	5.0
34.	Private Branch Exchanges	7.0
35.	Booths & Spl. Fittings	7.0
62.	General Shop Equipment	10.0
64.	General Stable and Garage Equipment	20.0
63.	General Store Equipment	10.0
65.	General Tools & Implements	20.0
	Wire, Aerial—	
43.	Exchange	9.6
53.	Toll	3.8

1119 That the composite rate resulting from the application of the above specific rates was 5.82% for the year 1920 and 5.81% for the year 1921.

That under the regulations of the Interstate Commerce Commission plaintiff is required to file an annual report as of December 31st, showing, among other things, the composite rate of depreciation charged during the year. Plaintiff has so filed the composite rate so charged for each year.

That the amendment to Paragraph 5 of Section 20 of the Interstate Commerce Act, made by Section 435 of the Transportation Act, 1920, became effective on February 28, 1920, and that in the exercise of the authority vested in the Interstate Commerce Commis-

sion by said amendment to the interstate commerce act, on March 18, 1920, issued the following order:

"Interstate Commerce Commission,

Washington.

March 18, 1920.

"To all Carriers Concerned:

"Section 435 of the Transportation Act, 1920, contains the following provision:

"'The Commission shall, as soon as practicable, prescribe, for carriers subject to this Act, the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. The carriers subject to this Act shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carriers shall in any case include in any form under its operating or other a120 expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.'"

"Information received by the Commission indicates the existence of doubt as to the propriety of carriers making any charges to operating expenses with respect to depreciation prior to such time as the Commission shall prescribe the specific percentages of depreciation which shall be charged.

"The purpose of this circular is to dispel any such doubt as may exist in the minds of accounting officers.

"Until the Commission shall otherwise order, all carriers subject to the Act to regulate commerce should continue to observe the requirements respecting the accounting for depreciation which are embodied in the effective accounting classifications prescribed by the Commission for the respective classes of carriers.

GEORGE B. McGINTY,
Secretary."

That in order to carry out the provisions of said Section 20, as amended, the Interstate Commerce Commission organized a subdivision of its bureau of accounts, which is designated as the depreciation section, with Mr. Frank S. Fowler as chief for the purpose of aiding the commission in carrying out the provisions of said section as amended.

That for over a year last past, the said depreciation section has been conducting an investigation of the subject, preliminary to public hearings, which the commission has indicated its purpose to hold

with reference to this matter. In connection with this investigation Mr. Charles A. Heiss, Comptroller of the American Telephone and Telegraph Company, has been authorized to represent the Bell System companies, including the plaintiff, before the depreciation section.

a121 That on January 6th, 1921, the said Mr. Fowler addressed to the said Mr. Heiss a letter, copy of which follows:

"Interstate Commerce Commission,

Bureau of Accounts,

Washington.

January 6, 1921.

"Mr. Charles A. Heiss,
Comptroller, American Telephone & Telegraph Co.,
195 Broadway, New York, New York.

DEAR SIR:

Section 20 of the Interstate Commerce Act, as amended February 28, 1920, requires the Interstate Commerce Commission to prescribe for carriers subject to the Act, the classes of property for which depreciation charges may properly be included under operating expenses and the percentages of depreciation which shall be charged with respect to each of such classes of property.

"For the purpose of carrying out these requirements a preliminary investigation of the depreciation question is being conducted to secure all information possible to formulate recommendations which will be made public and fully considered at public hearings before the Commission takes the final steps required by the Act.

"In view of the magnitude of this subject and its paramount importance it is desired that all interested persons be given an opportunity to present their views and you are therefore requested to submit, with as little delay as possible, a statement or brief representing the opinion of your company with respect to the classes of depreciable property (by groups if practicable), the method of ascertaining the service life and salvage value, the bases upon which
a122 depreciation charges should be accrued, the necessity for accruals, the relation of maintenance charges to depreciation and the manner in which the percentages of depreciation applicable to the several classes of property should be determined.

"It is also desired that you incorporate in the statement any suggestions or procedures which in your judgment will aid the Commission to reach a just and reasonable determination of the questions involved.

"It will be much appreciated if you will advise me of the approximate date your statement may be expected.

Yours very truly,

(Sgd.) FRANK S. FOWLER,
Chief of Depreciation Section."

That in response to this letter, Mr. Heiss wrote Mr. Fowler, und
date of March 24th, 1921, setting forth in behalf of the Bell Syste
the views, opinions and suggestions endorsed by those companie
responsive to the third and fourth paragraphs of the above letter.

That the rates put into effect on August 1, 1919, when the fe
eral government surrendered the possession and control of plaintif
property, as above set forth, have been maintained in effect pu
suant to said order up to the present time.

That under date December 30, 1921, pursuant to the requireme
of the Interstate Commerce Commission, plaintiff filed with sa
Commission the said specific rates of depreciation so put into effect
August 1, 1919.

That in the meantime the plaintiff has been, and it is now, c
operating with Mr. Heiss in an endeavor to furnish to the Interst
Commerce Commission the data necessary to enable that Commissi
to prescribe, under the Act of Congress aforesaid, t
a123-124 classes of plaintiff's property for which depreciati
charges may properly be included under operating e
penses and the percentage of depreciation which shall thereafter
charged by the plaintiff with respect to each class of property.

GEORGE W. WHITTEMORE.

Subscribed and sworn to before me this 29th day of March, 192

[SEAL.] LINCOLN JONES,
Notary Public,
Kings Co., No. 38.

Cert. Filed in N. Y. Co. No. 66.

a125 District Court of the United States, Southern District of Ne
York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit of Seymour L. Andrew.

STATE OF NEW YORK,
County of New York, ss:

I, Seymour L. Andrew, being duly sworn, on oath state:

That I am the Chief Statistician of the American Telephone and
Telegraph Company and have been continuously engaged in statis
tical work for the said company for eleven years last past.

That as statistician I have charge of the work of compiling, ana
lyzing and deducing statistical results from the facts which are avail

able and are related to the telephone industry, so that these results may be utilized by the said company and by the associated companies of the Bell System in the transaction of their businesses.

That the chart attached hereto and identified as Exhibit A was prepared under my supervision and direction; that the said
a126 chart is intended to show diagrammatically the trends of per station revenues of the New York Telephone Company, wholesale commodity prices, prices of telephone construction materials, general wages in New York City, and wages of the New York Telephone Company between January 1, 1895, and January 1, 1922; that the base to which the results shown by the chart are related is indicated by the line 00; that the years are indicated by the figures at the bottom of the chart; that for the years 1919 to 1921 inclusive a larger scale was adopted, so that the results might be shown by months as well as years; that the figures on the side of the diagram show the per cent of increase or decrease, as the case may be, from the condition existing in 1895 and indicated by the base line 00; that the words upon the chart in connection with the various curves shown upon it indicate what each of these lines represents.

That the curve showing the trend of wholesale commodity prices was made up from the figures compiled and published by the United States Bureau of Labor Statistics; the curve showing the trend of general wages in New York City is made up from data compiled and published by the United States Bureau of Labor Statistics and the New York State Department of Labor, the data of the New York State Department of Labor covering the later years and the data of the United States Bureau of Labor Statistics covering the former years, during which no such statistics were issued by the New York State Labor Department; that the curves showing the trend of wages of the New York Telephone Company and the trend of its average revenue per station are made up from the records and accounts of that company; that the curve showing the trend of telephone construction material prices is made up from the price records of the Western Electric Company, Incorporated, the largest
a127-128 manufacturer and seller of such material in the world and the source from which such material is obtained by the plaintiff, the New York Telephone Company. The curve last mentioned is based upon prices of representative items of finished material entering into the construction costs of telephone companies and covering a large proportion of such costs and, in my opinion, is fairly representative of telephone construction material prices.

That the attached diagram, Exhibit A, shows with substantial accuracy the trends during the period covered by it of the per station revenues of the plaintiff, the New York Telephone Company, the wholesale commodity prices, prices of telephone construction materials, general wages in New York City, and wages of the New York Telephone Company as these matters are shown by the data to which reference has been heretofore made.

The curves on the chart have been constructed to show trends, and therefore do not show the minor fluctuations indicated by the de-

tailed statistics marked Exhibit B hereto, which are not significant in respect of such trends.

That attached hereto are the supporting figures obtained from the sources above stated, upon which the chart Exhibit A is based. Exhibit B also contains more detailed information as to the sources from which the said figures have been obtained and as to the manner of their use.

SEYMOUR L. ANDREW.

Subscribed and sworn to before me this 29th day of March, 1922.
[SEAL.] H. W. HOLLSBERG,
Notary Public, Kings County.

Certificate Filed in New York County.
Clerk's No. 171, Register's No. 3174.
My Commission Expires March 30, 1923.

a129 Exhibit B attached to affidavit of Seymour L. Andrew.

Statistics represented diagrammatically by chart Exhibit A.

"Comparison of trends in per station revenues of New York Telephone Company, wholesale commodity prices, prices of telephone construction materials, general wages in New York State and wages of New York Telephone Company since 1895."

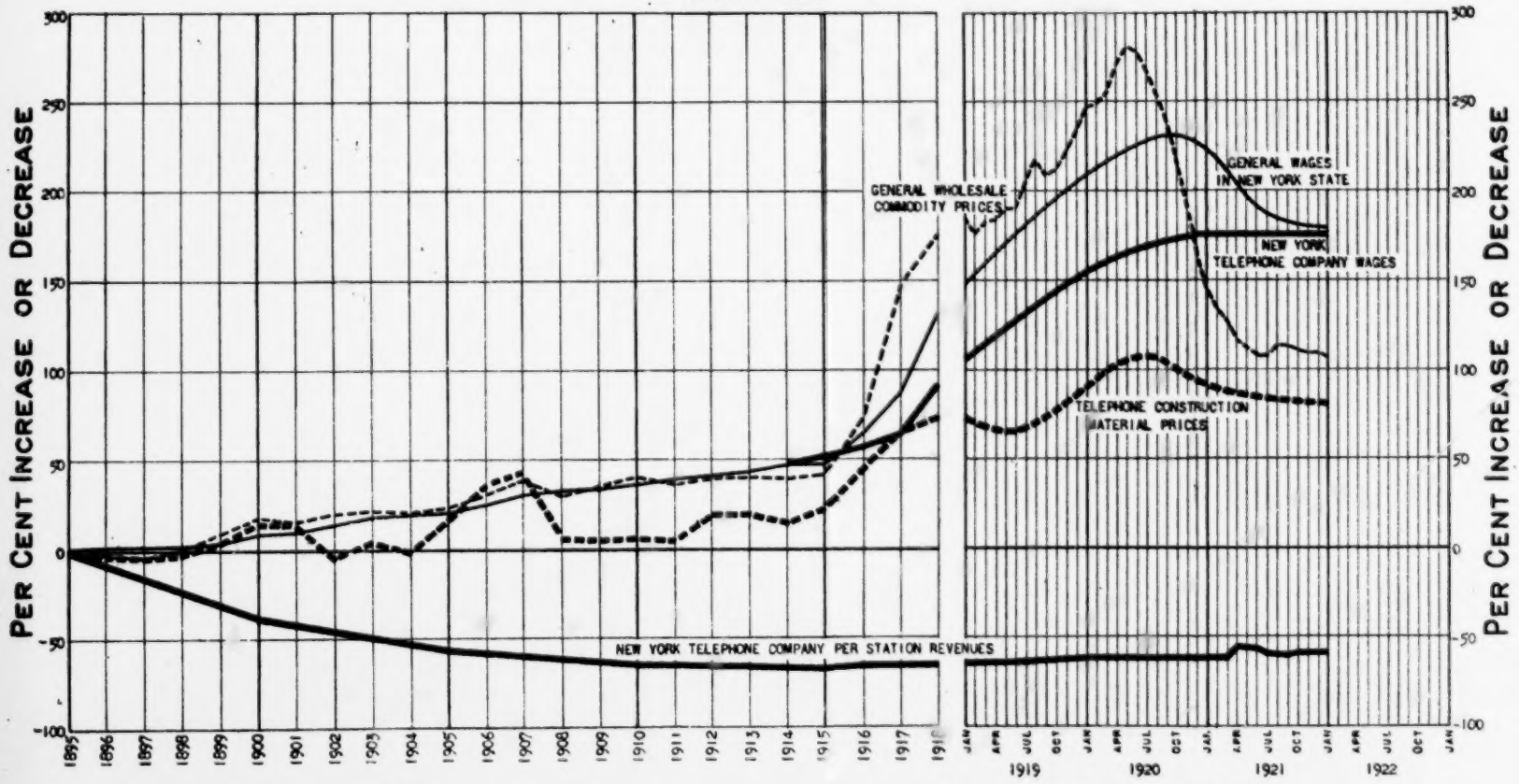
(Here follows diagram marked page a130.)

PER CENT INCREASE OR DECREASE

a 130

Exhibit A attached to affidavit of Seymour L. Andrew.

COMPARISON OF TRENDS IN PER STATION REVENUES OF NEW YORK TELEPHONE COMPANY, WHOLESALE COMMODITY PRICES, PRICES OF TELEPHONE CONSTRUCTION MATERIALS, GENERAL WAGES IN NEW YORK STATE AND WAGES OF NEW YORK TELEPHONE COMPANY SINCE 1895



NEW YORK TELEPHONE COMPANY PER STATION REVENUES - Trend of average exchange revenue per station for New York Telephone Company and its predecessors.

NEW YORK TELEPHONE COMPANY WAGES - Trend of average wage earnings of employees of New York Telephone Company since 1914; the trend prior to 1914 assumed to be the same as the trend in general wages.

TELEPHONE CONSTRUCTION MATERIAL PRICES - Trend of average prices of representative items of finished material entering into the construction costs of telephone companies; the trend prior to 1914 assumed to be the same as the trend of the corresponding raw materials.

GENERAL WAGES IN NEW YORK STATE - Trend of average wage earnings per employee in representative manufacturing industries in the United States up to 1914; in New York State since 1914.

GENERAL WHOLESALE COMMODITY PRICES - Trend of average wholesale prices of all commodities for the United States.

1131 New York Telephone Company per Station Revenues.

Column "A" shows the average monthly exchange revenue per station for each year from 1895 to 1918, both inclusive, and for each of the months of 1919, 1920 and 1921. The data cover the operations of the New York Telephone Company and its predecessors in substantially the territory now operated by the New York Telephone Company, as shown by the accounts and records of these companies. Column "B" shows the per cent decrease over 1895.

	Column A.	Column B.
1895	$9.35	....
1896	8.55	— 8.6
1897	7.68	—17.9
1898	7.10	—24.1
1899	6.28	—32.8
1900	5.80	—37.9
1901	5.49	—41.3
1902	5.07	—45.8
1903	4.78	—48.9
1904	4.52	—51.6
1905	3.98	—57.4
1906	3.53	—62.2
1907	3.48	—62.8
1908	3.37	—63.9
1909	3.37	—63.9
1910	3.40	—63.6
1911	3.31	—64.6
1912	3.27	—65.0
1913	3.20	—65.7
1914	2.99	—68.0
1915	2.97	—68.2
1916	3.16	—66.2
1917	3.20	—65.7
1918	3.16	—66.1
1919—January	3.21	—65.6
February	3.21	—65.6
March	3.24	—65.3
April	3.27	—65.0
May	3.31	—64.6
June	3.28	—64.9
July	3.38	—63.9
August	3.29	—64.8
September	3.35	—64.1
October	3.40	—63.6
November	3.34	—64.2
December	3.46	—63.0
1132		
1920—January	3.59	—61.6

		Column A.	Column B.
	February	3.52	—62.3
	March	3.60	—61.4
	April	3.56	—61.9
	May	3.56	—61.9
	June	3.58	—61.7
	July	3.54	—62.1
	August	3.47	—62.8
	September	3.64	—61.0
	October	3.68	—60.6
	November	3.68	—60.6
	December	3.71	—60.3
1921—	January	3.67	—60.7
	February	3.60	—61.5
	March	3.67	—60.8
	April	4.22	—54.9
	May	4.14	—55.7
	June	4.06	—56.5
	July	3.84	—58.9
	August	3.77	—59.6
	September	3.78	—59.6
	October	3.85	—58.8
	November	3.87	—58.6
	December	3.69	—60.6

*a*133 General Wholesale Commodity Prices.

The figures in Column "A" for the year- 1895 to 1913, inclusive, are from Bulletin No. 173 of the United States Bureau of Labor Statistics, "Index Numbers of Wholesale Prices in the United States and Foreign Countries," page 126, and represent, for "All Commodities," a weighted annual index of wholesale prices for the United States based on average prices during the period 1890 to 1899. The figures for the years 1913 to 1918, inclusive, and for the years 1919, 1920, and 1921 by months, in Column "B," are from various issues of the Monthly Labor Review published by the U. S. Bureau of Labor Statistics, and represent substantially the same index as for 1895 to 1913, continued beyond 1913 but based on average prices in the year 1913 instead of on average prices during the period 1890 to 1899.

In Column "C," the data of Columns "A" and "B" have been combined into a continuous series based upon the year 1895. (In this process the slight error mentioned by the Bureau of Labor Statistics on pages 43 and 44 of Bulletin No. 173 has been corrected.)

The figures in Column "D" represent the per cent increase or decrease in the index number for each year or month, as compared with 1895.

	Column A.	Column B.	Column C.	Column D.
1895	93.6	...	100.0	.....
1896	90.4	...	96.6	— 3.4
1897	89.7	...	95.8	— 4.2
1898	93.4	...	99.9	— 0.1
1899	101.7	...	108.7	+ 8.7
1900	110.5	...	118.1	+ 18.1
1901	108.5	...	115.8	+ 15.8
1902	112.9	...	120.4	+ 20.4
1903	113.6	...	121.4	+ 21.4
1904	113.0	...	120.9	+ 20.9
1905	115.9	...	123.8	+ 23.8
1906	122.5	...	131.0	+ 31.0
a134				
1907	129.5	...	138.2	+ 38.2
1908	122.8	...	130.4	+ 30.4
1909	126.5	...	134.6	+ 34.6
1910	131.6	...	139.5	+ 39.5
1911	129.2	...	135.6	+ 35.6
1912	133.6	...	139.5	+ 39.5
1913	135.2	100	140.1	+ 40.1
1914	.....	100	138.7	+ 38.7
1915	.....	101	141.5	+ 41.5
1916	.....	124	173.7	+ 73.7
1917	.....	176	246.5	+146.5
1918	.....	196	274.5	+174.5
1919—January	.....	203	284.3	+184.3
February	.....	197	275.9	+175.9
March	.....	201	281.5	+181.5
April	.....	203	284.3	+184.3
May	.....	207	289.9	+189.9
June	.....	207	289.9	+189.9
July	.....	218	305.3	+205.3
August	.....	226	316.5	+216.5
September	.....	220	308.0	+208.0
October	.....	223	312.3	+212.3
November	.....	230	322.1	+222.1
December	.....	238	333.3	+233.3
1920—January	.....	248	347.3	+247.3
February	.....	248	348.7	+248.7
March	.....	253	354.3	+254.3
April	.....	265	371.1	+271.1
May	.....	272	381.0	+281.0
June	.....	269	376.8	+276.8
July	.....	262	366.9	+266.9
August	.....	250	350.1	+250.1
September	.....	242	338.9	+238.9
October	.....	225	315.1	+215.1
November	.....	207	289.9	+189.9

	Column A.	Column B.	Column C.	Column D.
December	.....	189	264.7	+164.7
1921—January	.....	177	247.9	+147.9
February	.....	167	233.9	+133.9
March	.....	162	226.9	+126.9
April	.....	154	215.7	+115.7
May	.....	151	211.6	+111.6
June	.....	148	207.3	+107.3
July	.....	148	207.3	+107.3
August	.....	152	212.9	+112.9
September	.....	152	212.9	+112.9
October	.....	150	210.1	+110.1
November	.....	149	208.7	+108.7
December	.....	149	208.7	+108.7

*a*135 Telephone Construction Material Prices.

For the years 1914 to 1921, both inclusive, the figures in Column "A" represent a weighted average annual index number, based on 1914, of the prices to Associated Bell Companies of important representative items of finished material entering into telephone construction costs, these index numbers being prepared from price records maintained by the Western Electric Company, Incorporated.

These data not being available for years prior to 1914, the trend from 1895 to 1914, shown on the chart, represents the trend of the market prices of the raw materials entering into the finished materials mentioned above; and the figures in Column "B" represent a weighted annual index number of such raw material prices for those years, based on the year 1895.

The figures in Column "C" represent a recomputation of the figures for the years 1914 to 1921, inclusive, in Column "A" to a base of 1895 instead of 1914.

The figures in Column "D" represent the per cent increase or decrease in the annual index number for each year, as compared with 1895.

For the years 1919, 1920 and 1921, exact data by months were not available. The curve on the chart has been smoothed to indicate the monthly trend during these three years on the basis of the movement of the prices of approximately similar materials.

a136

	Column A.	Column B.	Column C.	Column D.
1895	.....	100.0	.....	.....
1896	.....	94.3	.....	— 5.7
1897	.....	95.7	.....	— 4.3
1898	.....	98.6	.....	— 1.4
1899	.....	105.7	.....	+ 5.7
1900	.....	114.3	.....	+ 14.3
1901	.....	112.8	.....	+ 12.8
1902	.....	96.3	.....	— 3.7
1903	.....	102.8	.....	+ 2.8
1904	.....	98.9	.....	— 1.1
1905	.....	115.3	.....	+ 15.3
1906	.....	136.1	.....	+ 36.1
1907	.....	142.1	.....	+ 42.1
1908	.....	106.3	.....	+ 6.8
1909	.....	104.6	.....	+ 4.6
1910	.....	106.6	.....	+ 6.6
1911	.....	103.5	.....	+ 3.5
1912	.....	118.5	.....	+ 18.5
1913	.....	119.2	.....	+ 19.2
1914	100.0	115.0	115.0	+ 15.0
1915	106.1	.....	122.0	+ 22.0
1916	127.3	.....	146.4	+ 46.4
1917	143.8	.....	165.4	+ 65.4
1918	150.2	.....	172.7	+ 72.7
1919	150.2	.....	172.7	+ 72.7
1920	174.7	.....	200.9	+100.9
1921	160.8	.....	184.9	+ 84.9

a137 General Wages in New York State.

The figures in Column "A" for the years 1895 to 1907, inclusive, are from Bulletin No. 77 of the U. S. Bureau of Labor Statistics, "Wages and Hours of Labor in Manufacturing Industries 1890 to 1907," page 7, and represent an annual index number of wages per hour in representative industries in the United States based on average wages per hour during the period 1890–1899. The figures in Column "B" for the years 1907 to 1915, inclusive, are from Bulletin No. 194 of the United States Bureau of Labor Statistics, "Union Scale of Wages and Hours of Labor," page 21, and represent an annual index number of rates of wages per full time week in representative industries based on rates of wages in 1907. The figures in Column "C" for the years 1915 to 1918, inclusive, and for the months of 1919, 1920, 1921 are from The Industrial Bulletin published by the Industrial Commissioner of New York State, and represent average weekly earnings in representative industrial establishments in New York State.

In Column "D" the data of Columns "A," "B" and "C" have been combined into a continuous series based upon the year 1895.

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The figures in Column "E" represent the per cent increase o decrease in the index number for each year or month, as compare with 1895.

The curve for the years 1919, 1920 and 1921, as shown on th chart, has been smoothed to represent the general trend of the data

	Column A.	Column B.	Column C.	Column D.	Column E.
1895	98.3	...	.....	100.0	.....
1896	99.7	...	.....	101.4	+1.
1897	99.6	...	.....	101.3	+1.
1898	100.2	...	.....	101.9	+1.
1899	102.0	...	.....	103.8	+3.
1900	105.5	...	.....	107.3	+7.
1901	108.0	...	.....	109.9	+9.
1902	112.2	...	.....	114.4	+14.
*a*138					
1903	116.3	...	.....	118.3	+18.
1904	117.0	...	.....	119.0	+19.
1905	118.9	...	.....	121.0	+21.
1906	124.2	...	.....	126.3	+26.
1907	128.8	100	.....	131.0	+31.
1908	.....	101	.....	132.3	+32.
1909	.....	102	.....	133.6	+33.
1910	.....	104	.....	136.2	+36.
1911	.....	105	.....	137.6	+37.
1912	.....	107	.....	140.2	+40.
1913	.....	109	.....	142.8	+42.
1914	.....	111	.....	145.4	+45.
1915	.....	112	$12.85	146.7	+46.
1916	.....	...	14.43	164.7	+64.
1917	.....	...	16.37	186.9	+86.
1918	.....	...	20.35	232.3	+132.
1919—January	.....	...	23.03	262.9	+162.
February	.....	...	22.07	252.0	+152.
March	.....	...	22.20	253.4	+153.
April	.....	...	22.11	252.4	+152.
May	.....	...	22.23	253.8	+153.
June	.....	...	22.51	257.0	+157.
July	.....	...	23.10	263.7	+163.
August	.....	...	23.85	272.3	+172.
September	.....	...	24.83	283.5	+183.
October	.....	...	24.41	278.7	+178.
November	.....	...	25.37	289.6	+189.
December	.....	...	26.32	300.5	+200.
1920—January	.....	...	26.52	302.8	+202.
February	.....	...	26.47	302.2	+202.
March	.....	...	27.87	318.2	+218.
April	.....	...	27.80	317.4	+217.
May	.....	...	28.45	324.8	+224.

	Column A.	Column B.	Column C.	Column D.	Column E.
June		...	28.77	328.4	+228.4
July		...	28.49	325.2	+225.2
August		...	28.71	327.8	+227.8
September		...	28.73	328.0	+228.0
October		...	28.93	330.3	+230.3
November		...	28.70	327.6	+227.6
December		...	28.35	323.6	+223.6
1921—January		...	27.61	315.2	+215.2
February		...	26.77	305.6	+205.6
March		...	26.97	307.9	+207.9
April		...	26.20	299.1	+199.1
May		...	25.86	295.2	+195.2
June		...	25.71	293.5	+193.5
July		...	25.26	288.4	+188.4
August		...	25.43	290.3	+190.3
September		...	25.07	286.2	+186.2
October		...	24.53	280.0	+180.0
November		...	24.32	277.6	+177.6
December		...	24.91	284.4	+184.4

a139 New York Telephone Company Wages.

From 1914 to 1921, data are available showing the average monthly wage earnings of all employees of the New York Telephone Company, and these are shown in Column "A."

For the period from 1895 to 1914, similar data are not available, but data as to general wages are available (see under "General Wages in New York State"), and these data on general wages have been assumed to indicate the trend of New York Telephone Company wages during that period. The figures in Columns "D" and "E" under "General Wages in New York State" have, therefore, been repeated in Columns "B" and "C" hereunder, for 1895 to 1914, and continued for the years 1914 to 1921, inclusive, on the basis of the New York Telephone Company data in Column "A." The final figures in Column "C" represent the per cent increase for each year or month, as compared with 1895.

The curve for the years 1919, 1920 and 1921, as shown on the chart, has been smoothed to represent the general trend of the data.

	Column A.	Column B.	Column C.
1895	.....	100.0	.....
1896	.....	101.4	+1.4
1897	.....	101.3	+1.3
1898	.....	101.9	+1.9
1899	.....	103.8	+3.8
1900	.....	107.3	+7.3
1901	.....	109.9	+9.9
1902	.....	114.4	+14.4

	Column A.	Column B.	Column C.
1903	.....	118.3	+18.3
1904	.....	119.0	+19.0
1905	.....	121.0	+21.0
1906	.....	126.3	+26.3
1907	.....	131.0	+31.0
1908	.....	132.3	+32.3
1909	.....	133.6	+33.6
1910	.....	136.2	+36.2
1911	.....	137.6	+37.6
*a*140			
1912	.....	140.2	+40.2
1913	.....	142.8	+42.8
1914	$60.66	145.4	+45.4
1915	62.75	151.0	+51.0
1916	65.00	156.5	+56.5
1917	68.17	164.1	+64.1
1918	79.83	192.2	+92.2
1919—January	92.54	227.7	+122.7
February	85.49	205.8	+105.8
March	90.84	218.7	+118.7
April	89.37	215.1	+115.1
May	94.82	228.2	+128.2
June	90.44	217.7	+117.7
July	98.71	237.6	+137.6
August	95.19	229.1	+129.1
September	95.07	228.8	+128.8
October	105.35	253.6	+153.6
November	100.89	242.8	+142.8
December	105.33	253.5	+153.5
1920—January	103.21	248.4	+148.4
February	101.91	245.3	+145.3
March	110.83	266.8	+166.8
April	109.17	262.8	+162.8
May	112.50	270.8	+170.8
June	110.39	265.7	+165.7
July	111.96	269.5	+169.5
August	108.01	260.0	+160.0
September	108.02	260.0	+160.0
October	111.24	267.8	+167.8
November	109.76	264.4	+164.4
December	111.27	267.8	+167.8
1921—January	109.76	264.2	+164.2
February	102.46	246.6	+146.6
March	109.81	264.3	+164.3
April	110.52	266.0	+166.0
May	113.30	272.7	+172.7
June	111.78	269.1	+169.1
July	113.60	273.4	+173.4

	Column A.	Column B.	Column C.
August.....	113.43	273.0	+173.0
September	111.77	269.0	+169.0
October.....	115.90	279.0	+179.0
November.....	116.84	281.2	+181.2
December	117.68	283.3	+183.3

Endorsed: Filed U. S. District Court, S. D. of N. Y., May 22, 922.

(Copy.)

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I hereby certify and return that I served the annexed subpœna on he therein-named Charles D. Newton, Attorney-General of the State f New York, by handing to and leaving a true and correct copy hereof with Blaine F. Sturgis, Deputy Attorney-General of the State of New York, personally at The Capitol, Albany in said District n the First day of April, A. D. 1922.

D. F. BREITENSTEIN,
U. S. Marshal,
By F. J. LACHNER,
Deputy.

Marshal's fees and expenses:

Expenses, Nothing.
Fees & Mileage, $2.06.

2 Copy.

Equity Subpœna.

[Seal of the Court.]

The President of the United States of America to William A. Prendergast, William R. Pooley, Charles Van Voorhis, Oliver C. Semple, Charles G. Blakeslee, the persons constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel to said Public Service Commission, and Charles D. Newton, Attorney-General of the State of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by New York Telephone Company, a Corporation, and to further do and re-

ceive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars ($250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 29th day of March, in the year One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-sixth.

ALEX. GILCHRIST, JR.,
Clerk.

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Complainant's Sol'rs.

The Defendants are required to file their answer or other defense in the above cause in the Clerk's Office of this Court on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

Endorsed: Filed U. S. District Court, S. D. of N. Y., April 3, 1922.

[Endorsed:] E. 23-252. A true copy of a Writ sued out of the District Court of the United States for the Southern District of New York. Alex. Gilchrist, Clerk. (Seal of the Court.) U. S. District Court, S. D. of N. Y. Filed April 3, 1922. M. 25¢.

3 (Copy.)

Form No. 302.

I hereby certify, That on the 30 day of March, 1922, at the City of New York, in my district, I served the within Subpœna in Equity upon the within named Defendants, William A. Prendergast, William R. Pooley, Charles Van Voorhis, Oliver C. Semple and Charles G. Blakeslee, the persons constituting the Public Service Commission of the State of New York by exhibiting to Ledyard P. Hale as Counsel for said Commission as per admission of service endorsed herein at 50 Church St., N. Y. C. the within original, and at the same time leaving with him a copy for each thereof.

WM. C. HECHT,
United States Marshal,
Southern District of New York.

Dated Mar. 30, 1922.

(J. W. P.)

(Copy.)

Form No. 302.

I hereby certify, That on the 30 day of March, 1922, at the City New York, in my district, I personally served the within Subpœna Equity upon the within-named Defendant Ledyard P. Hale, Coun- to said Public Service Commission at 30 Church St., N. Y. C. by hibiting to him as per admission endorsed herein the within orig- al, and at the same time leaving with him a copy thereof.

WM. C. HECHT,
United States Marshal,
Southern District of New York.

Dated March 30, 1922.

(J. W. P.)

(Copy.)

Equity Subpœna.

[Seal of the Court.]

he President of the United States of America to William A. Pren- dergast, William R. Pooley, Charles Van Voorhis, Oliver C. Sem- ple, Charles G. Blakeslee, the persons constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel to said Public Service Commission, and Charles D. New- ton, Attorney General of the State of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern Dis- rict of New York, in the Second Circuit, to answer a bill of com- laint exhibited against yo[illegible]n the said Court in a suit in Equity, by New York Telephone Company, a corporation, and to further do and eceive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of ou of Two Hundred and Fifty Dollars ($250).

Witness, Honorable Learned Hand, Judge of the District Court of he United States for the Southern District of New York, at the City f New York, on the 29th day of March in the year One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-sixth.

ALEX. GILCHRIST, JR.,
Clerk.

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Sol'rs Complainants.
15 Dey St.

The defendants are required to file their answer or other defens in the above cause in the Clerk's Office of this Court on or before th twentieth day after service hereof excluding the day of said service otherwise the bill aforesaid may be taken pro confesso.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

Endorsed: Filed U. S. District Court, S. D. of N. Y., Mar. 31 1922.

6 Original. 12.72. Original. E. 23-252. Original.

Personal service of within subpœna on Charles D. Newton, At torney General of State of New York, is hereby admitted Mch. 30 1922.

CHARLES D. NEWTON,
Atty. Gen.,
By THEO. F. FENNELL,
First Deputy Att'ys Gen.

Personal service of within Subpœna on William A. Prendergas William A. Pooley, Charles Van Voorhis, Oliver C. Semple, Charl G. Blakeslee & Ledyard P. Hale is hereby admitted March 30, 192

LEDYARD P. HALE,
Atty., in Person & Counsel to Public Service Commission of the State of New York.

U. S. District Court, S. D. of N. Y. Filed Mar. 31, 1922. 25 #1041.

7 *Petition of the City of New York to Intervene as a Party Defendant.*

District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST, WILLIAM R. POOLEY, CHARLES VAN Voorhis, Oliver C. Semple, Charles G. Blakeslee, the Persons Constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel of said Public Service Commission, and Charles D. Newton, Attorney General of the State of New York, Defendants.

To the Honorable Judge of the District Court of the United States for the Southern District of New York:

1. The petition of the City of New York, made through John P. O'Brien, Corporation Counsel, shows as follows, upon information and belief:

2. Your petitioner, The City of New York, is a domestic, municipal corporation, organized and existing under and pursuant to the authority of Chapter 378 of the Laws of 1897 of the State of New York, as amended by Chapter 466 of the Laws of 1901, wherein and whereby it became the successor corporation of certain domestic, municipal public corporations theretofore existing under and pursuant to ancient charters and acts of the Legislature.

3. This action was instituted by the filing of a complaint
8 by the plaintiff, the New York Telephone Company, filed and verified the 29th day of March 1922.

4. This is a proceeding in Equity, praying that the rates prescribed in the orders of the Public Service Commission, dated March 3, 1922 (Exhibits E and F attached to plaintiff's complaint), be decreed to be confiscatory and in violation of the Constitution of the United States, and the orders imposing the same to be void; and further praying that the defendants be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff to observe or put in force on April 1, 1922, or to observe and keep in force thereafter, the rates for telephone service prescribed by said orders of March 3, 1922, or either of said orders.

5. Exhibit E, annexed to plaintiff's complaint, is an order of the Public Service Commission, dated the 3rd day of March, 1922, reducing rates for telephone service to subscribers within the City of

New York, which order was made in Case No. 7720. Exhibit F, an
nexed to plaintiff's complaint, is an order of the Public Service Com
mission, also of the same date, reducing rates for telephone service t
subscribers in the State of New York, outside of the area comprisin
the City of New York. This order was made in Case No. 377.

6. The hearings before the Public Service Commission of the Stat
of New York in Case No. 7720, affecting telephone rates for loca
exchange service in the City of New York, were commenced about th
month of October, 1920. The City of New York appeare
9 at the very outset and has appeared regularly at each an
every hearing held by the Commission. At various hearings
particularly in the beginning, individuals, appearing for themselve
and for public bodies and associations, were present and participate
to a very slight extent in the examination of witnesses; but for man
months there has been no representative whatsoever in behalf of th
subscribers other than The City of New York.

7. This case, to wit, Case No. 7720, is still pending before th
Public Service Commission, and The City of New York, in its ow
interest as a user and in the interest of the telephone users of th
City of New York, retained the expert help of Milo R. Maltbie,
public utility consultant, and James C. Wray, an eminent telephon
and consulting engineer, and under them, staffs of well-trained an
highly qualified engineers and accountants. With the aid of thi
technical assistance, the City conducted a cross-examination of th
witnesses produced by the Telephone Company, and for months ha
presented evidence to the Commission consisting of engineering, a
counting and statistical data upon many phases of the case, em
bracing, among other things, cost, valuation and depreciation of sai
Telephone Company's property in the City of New York; proof re
lating to income and revenues from various classes of service rendere
by said Telephone Company; operating expenses covering partic
larly maintenance, traffic, cost and annual allowance for depreciatio
and profits accruing from the operation of the company in recen
years. The City has now in course of preparation further proo
among other things, on the subject of commercial, general and mi
cellaneous expenses, taxes, commissions paid to the America
10 Telephone & Telegraph Company, and probable cost o
operation for the future, proofs laying the basis for the con
clusion that toll and local exchange service should each bear thei
fair share of the cost of rendering those respective services.

8. In making a study of the subject matter in this case, it wa
necessary for the experts retained by the City of New York to mak
exhaustive studies of complicated accounts and engineering record
necessarily involving the expenditure of many thousands of dollar

9. To date no testimony whatever has been offered in Case No
7720 by anyone other than The City of New York and the plaintif

10. The City of New York is the largest subscriber to telephon
service of the New York Telephone Company in the City of Ne

York, and pays annually to said Company for such services over $450,000; and therefore, the rates paid by the City of New York for telephone service will be directly and materially affected by the determination of the issues in this case.

11. The City of New York has also appeared and taken part in Case No. 377, but has not submitted any testimony for the reason that the Telephone Company has not yet completed its submission of testimony in this case.

12. The order of the Public Service Commission, dated March 3, 1922, reducing rates to subscribers within the City of New York, as therein set forth, constituting Exhibit E, annexed to plaintiff's
11 complaint, does and will afford the said New York Telephone Company more than a fair return upon the fair value of the property used to render the service affected by said order.

13. The order of the Public Service Commission, dated March 3, 1922, reducing the rates to subscribers within the State of New York, outside of the City of New York, as therein set forth, constituting Exhibit F, annexed to plaintiff's complaint, does and will afford the said New York Telephone Company more than a fair return upon the fair value of the property used to render the service affected by said order.

14. Petitioner respectfully submits that it has an interest in the subject of this action, which entitles it to an order permitting it to intervene in this litigation as a party defendant, and therefore respectfully petitions this Court for such order under Equity Rule 37 of the Supreme Court of the United States and other pertinent provisions of law and the rules of said Court.

15. Wherefore, your petitioner respectfully prays for an order permitting it to intervene as a party defendant in the above entitled action.

THE CITY OF NEW YORK,
Petitioner,

By JOHN P. O'BRIEN,
Corporation Counsel.

Dated, New York, April 3, 1922.

12 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST, WILLIAM R. POOLEY, CHARLES VAN Voorhis, Oliver C. Semple, Charles G. Blakeslee, the Persons Constituting the Public Service Commission of the State of New York; Ledyard P. Hale, Counsel to said Public Service Commission, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

STATE OF NEW YORK,
County of New York, ss:

John P. O'Brien, being duly sworn, says that he is the Corporation Counsel of The City of New York, and as such that he is an officer of the Petitioner herein; that the foregoing petition is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the Petitioner is that it is a corporation; that the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Information obtained from the books and records
13 of the Law Department and other departments of the city government and from statements made to him by certain officers or agents of the Petitioner.

JOHN P. O'BRIEN.

Sworn to before me, this 3 day of April, 1922.
WALTER E. DUNN,
Notary Public, Kings County, No. 41.

Reg. No. 4038.
New York County Clerk's No. 54.
New York County Register's No. 4044.
Bronx Co. Clerk's No. 3.
Bronx Co. Register's No. 75.
Queens Co. Clerk's No. 689.
Certificate filed in Richmond Co.
Commission Expires March 30, 1924.

Endorsed: Filed U. S. District Court, S. D. of N. Y., April 8th, 1922.

14 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

Affidavit in Opposition to Motion of the City of New York to Intervene as a Party Defendant.

STATE OF NEW YORK,
County of New York, ss:

Frankland Briggs, being duly sworn, deposes and says:

I am an attorney-at-law and have charge for the plaintiff, New York Telephone Company, of all matters before the Public Service Commission of the State of New York in which that company is interested and am the same Frankland Briggs who made the affidavit herein on the application for an interlocutory injunction verified the 29th day of March, 1922, and now on file in this Court.

I have read the petition of The City of New York, verified the 3rd day of April, 1922, praying for an order permitting the said City to intervene as party defendant in the above entitled suit. A number of the statements contained in the said petition are incorrect and inaccurate; for instance the descriptions therein given of the orders of the Public Service Commission made on March 3rd, 1922, complained of in the verified bill of complaint herein and annexed thereto as exhibits "E" and "F," are so stated by the petitioner as to make it appear that the order marked "Exhibit F" does not relate to
15 exchange telephone service in the City of New York, whereas said order includes all municipalities in the State of New York in which plaintiff furnishes telephone service and the rates for service in the City of New York are specifically prescribed therein by including said City of New York in the grouping and classification of the various towns, cities and villages of the State under Group XI. It is stated in said order "Exhibit F" that said Group XI shall comprise the boroughs of Manhattan, The Bronx, Brooklyn, Queens and Richmond and that "the rates for this group shall be as prescribed in the order of March 3rd, 1922, in case No. 7720, upon terms and conditions as therein set forth." Said order, "Exhibit F," was made in a proceeding known as Case No. 377, commenced by the Public Service Commission by an order made by it on November 10, 1921, a copy of which is attached hereto and made a part hereof marked "Exhibit A." At the time of making said order "Exhibit A," said Public Service Commission published a memorandum in connection therewith, from which it appears that said proceeding for a statewide

investigation of the telephone rates and charges of the plaintiff was commenced by the Commission because of the fact that there were then pending before the Commission said Case No. 7720 and upwards of 135 complaints as to telephone rates which had been filed with it by various municipalities and public officers throughout the State of New York, and that it was apparent that if such cases were all heard separately by the Commission they could not finally be disposed of by it for several years. A true list of the municipalities and public officers that filed the complaints referred to in said memorandum published by the Commission in connection with its said order of November 10, 1921, and which are still pending and undisposed of, is attached hereto and made a part hereof marked "Exhibit B."

16 The City of New York in its said petition does not state correctly the proceedings had in, and the present status of, the said statewide proceeding known as Case 377, nor in the proceeding pending before said Commission known as Case No. 7720, which latter case was commenced upon the petition of the plaintiff in this suit to establish a schedule of increased rates for its telephone service in The City of New York. In said Case No. 377 upwards of fifteen hearings have been had before the Commission and this plaintiff has not yet been afforded an opportunity to present in such proceeding one-half of its evidence, and plaintiff expects and intends to present in such proceeding a great deal of evidence which is of the utmost importance to it, including, amongst other things, evidence as to the present value of its property used or useful in the rendition of its telephone service in the State of New York, including the City of New York, and evidence in support of its principal operating expenses.

In said Case No. 7720 the City of New York did not present any evidence, or ask the Commission to hold hearings for the purpose of permitting it to present evidence, from some time in May, 1921, until February 15th, 1922, although during all of said time the Commission had expressed itself as ready and willing to hold hearings therein and to receive any evidence presented by the City. Since the said 15th of February, 1922, only two other hearings have been held therein, to wit, one on March 8th and one on March 22nd, 1922, and the City has stated that it has a great deal more proof to offer therein and this plaintiff has not yet had an opportunity to cross-examine any of the City's witnesses in connection with any of the evidence offered by it, such cross-examination being withheld with the consent of the Commission until the City has presented all of its evidence. While it is true that no testimony has as yet been offered in said Case

17 No. 7720 by anyone other than the City of New York and this plaintiff it cannot be assumed that evidence therein will not be offered by others as appearances have been made in such proceeding before the Commission by all of the persons whose names appear upon the list which is hereto annexed and made a part hereof marked "Exhibit C," and each of such persons may ask for an opportunity to present some evidence therein.

In the petition of the City on its motion to be allowed to intervene as a party defendant in this suit it is stated (fol. 10) that "The City of New York is the largest subscriber to telephone service of the New York Telephone Company in the City of New York" and if this is taken to mean all of the various boards, departments and officers in all the five boroughs of the City of New York collectively, it may be true that they together constitute the largest single subscriber of this plaintiff in said City, but plaintiff has in said City upwards of 450,000 subscribers, a number of whom contract and pay for telephone service in an annual amount at present rates in excess of $100,000 each. The City of New York further alleges in the same folio of its said petition to intervene that "the rates paid by the City of New York for telephone service will be directly and materially affected by the determination of the issues in this case." Such statement is far too broad and is incorrect for the reason that the City is not charged the same rates by the plaintiff as are charged by it to its subscribers generally, but a much lower rate, which the City has not and conceivably cannot claim or allege is or will be unjust or unreasonable as to it. Since the year 1905 to and including the year 1921 formal written contracts for the furnishing of exchange telephone service to the various boards, departments and offices of the City of New York have been made by the plaintiff for the furnishing of its telephone
18 service at a discount of twenty-five per cent from the rates and charges made to its subscribers generally for similar service. The situation as to the contracts for service for the various boards, departments, and offices of said City for the year 1922 appears from the affidavits of William Thomas Knight and Alexander F. Ormsbee, both verified the 7th day of April, 1922, which are hereto attached and made a part hereof.

The discount of 25% which has been and is allowed to the City of New York by this plaintiff is granted voluntarily. While there is no legal obligation on its part to allow such discount nor is there anything in its schedules of rates or rules and regulation on file with the Public Service Commission relating to the giving of such discount or the amount thereof, and such discount is merely permitted by the provisions of sub-division 3 of section 92 of the Public Service Commission's Law, it is granted to the City of New York as a matter of favor. The plaintiff company expects and intends to continue such discount so long as it is possible and proper for it to do so. The City of New York has given the plaintiff no suggestion or intimation that it wishes such discount discontinued hereafter.

The amount for which the City of New York was billed by this plaintiff for exchange telephone service and equipment furnished to its various boards, departments and offices during the year 1921 was $432,099.91 and had such discount not been allowed to the said City the amount for which it would have been billed for such service and equipment would have been $576,133.22.

It is and has been the practice of the plaintiff to give to the City of New York and to other municipalities in the State of New York a discount from the rates charged by it for service furnished to its subscribers generally and the rates which the plaintiff may properly

charge its subscribers generally have no necessary relation to
19 those charged to The City of New York and such other municipalities of the State or to the justness or reasonableness thereof.

The annual message to the Legislature made on January 4, 1922, by The Honorable Nathan L. Miller, Governor of the State of New York, amongst other things, contained the following:

"*Telephone Investigation.*

The Public Service Commission has upon its own motion entered upon a State-wide inquiry of the business and property and intercompany relations of the New York Telephone Company for the purpose of determining the facts upon which to base a rate structure for the different localities of the State. The various municipalities of the State for the past two years have been urging such a course. One hundred and thirty-five complaints of telephone rates have been filed, most of them more than two years ago, but hearings have been had to date in only three cases, thus proving the necessity of the inquiry which has now been inaugurated. It is not practicable for each of the municipalities of the State to be represented at this inquiry. Moreover, the public generally both within and without the cities and villages are interested. The inquiry is judicial in its nature as the Commission must finally decide as between the public and the telephone company. The latter will, of course, be represented. I think the public should also be represented by counsel, and recommend that it be made the duty of the Attorney-General to represent the public in said proceeding. I am advised by a committee representing the municipalities, who have filed the complaints above referred to with the Public Service Commission that that course will be satisfactory to them."

In accordance with the foregoing recommendation of the Governor the legislature enacted Chapter 15 of the Laws of 1922, which became a law on February 9th, 1922. This statute provides that:

"The attorney-general shall appear for the *the* people of the state, and take such steps as may be necessary to protect the interests of the public, in the proceeding heretofore instituted by the public service commission and entitled 'In the matter of the hearing on motion of the commission, as to rates, charges and rentals, and the regulations
and practices affecting rates, charges and rentals of the New
20 York Telephone Company.' For such purpose, he may employ special deputies, experts and other assistants, and incur such other expenses as he may find necessary, within the amount appropriated by this act."

and said act carried an appropriation of $25,000 for the carrying out of its provisions.

Pursuant to the said statute the Attorney-General of the State, the Honorable Charles D. Newton, and the First Deputy Attorney-General of said State, the Honorable Thomas F. Fennell, appeared in the

said proceeding before the Public Service Commission, Case No. 377, and had their appearances noted therein, and have since and still are participating in the trial of such proceeding and represent therein the interests of all the municipalities and people in the State of New York.

On information and belief this deponent denies that the City of New York has an interest in the subject of this suit which entitles it to an order permitting it to intervene therein as a party defendant for the reasons aforesaid and the further ground that the City, as a subscriber for the service of the plaintiff, could not be materially or unjustly effected by the results of this suit in view of the 25% discount allowed it from the plaintiff's regular rates, as a consequence of which the City clearly could not claim, and it has not claimed, that the discounted rates are or will be unjust or unreasonable as to it.

(Sgd.) FRANKLAND BRIGGS.

Subscribed and sworn to before me this 7th day of April, 1922.

LINCOLN JONES,
Notary Public, Kings Co., No. 3.

Cert. Filed in N. Y. Co., No. 50.
Kings Co. Register No. 4004.
N. Y. Co. Register No 4045.

21 "EXHIBIT A" ATTACHED TO AFFIDAVIT OF FRANKLAND BRIGGS.

State of New York,

Public Service Commission.

At a Session of the Public Service Commission Held in the City of New York, on the 10th Day of November, 1921.

Present:

William A. Prendergast,
Chairman;
William R. Pooley,
Charles Van Voorhis,
Oliver C. Semple,
Charles G. Blakeslee,
Commissioners.

In the Matter of the Hearing on Motion of the Commission as to Rates, Charges, and Rentals and the Regulations and Practices Affecting Rates, Charges and Rentals of THE NEW YORK TELEPHONE COMPANY (Case No. 377).

On the motion of the Commission, it is ordered:

(1) That a hearing be had as to the rates, charges, tolls and rentals, demanded, exacted, charged or collected by the New York

Telephone Company, within the State of New York, for the transmission of messages or communications by telephone, and for the rental or use of any telephone lines, receiver, transmitter instrument, wire, cable, apparatus, conduit, machine, appliance or device or any extension or extension system; and as to the rules, regulations and practices of said New York Telephone Company affecting such rates, charges, rentals or service; to the end that if the same or any part thereof be unjust, unreasonable, unjustly discriminatory or unduly preferential, or anywise in violation of law, or if the maximum rates, charges or rentals chargeable by said New York Telephone Company are insufficient to yield reasonable compensation for the service rendered, the Commission may determine the
22 just and reasonable rates, charges and rentals to be thereafter observed and in force as the maximum to be charged, demanded, exacted or collected for the performance or rendering of the service specified and fix the same by order;

(2) That such hearing be held at the office of the Commission, No. 91 State Street, Albany, New York, on the 29th day of November, 1921, at 10 A. M.

(3) That notice of the time and place of such hearing be given, by the s-cretary of this Commission, to said New York Telephone Company, and to the complainants in proceedings as to any rates, charges, or rentals of said New York Telephone Company, now pending before this Commission undetermined, and others.

By the Commission.

[SEAL.] FRANCIS E. ROBERTS,
Secretary.

23 EXHIBIT B ATTACHED TO AFFIDAVIT OF FRANKLAND BRIGGS.

Olean.	Alden, Town of.
Naples.	Central Trades and Labor Assembly of Syracuse.
Penn Yan.	
Homer.	Newburgh.
Canastota.	Corning.
Saugerties.	Rome.
Livonia.	Lancaster.
Springville.	New Paltz.
Ft Edward.	Watervliet.
Alden, Village of.	Watertown.
Kingston.	Glens Falls.
Oakfield.	Elmira.
Pelham.	Little Falls.
Clinton.	Amsterdam.
North Tonawanda.	Oneida.
Cobleskill.	Troy.
Pawling.	Auburn.
Endicott.	Tonawanda.
Hartland.	Batavia.

Honeoye Falls.
Castile.
Kirkland.
Ilion.
Albany.
Minoa.
Watkins.
Hudson Falls.
Lake George.
Board of Supervisors of Oswego County.
Board of Supervisors of Dutchess County.
Board of Supervisors of Chemung County.
Silver Creek.
Board of Supervisors of Ontario County.
Holley.
Warsaw.
County Attorney, Ulster County.
Lyndonville.
County Attorney, Montgomery County.
Horseheads.
Board of Supervisors, Cortland County.
East Aurora.
Board of Supervisors, Warren County.
Bath.
Portchester.
Spring Valley.
Wyoming.
East Syracuse.
Dolgeville.
Painted Post.
Victor.
Herkimer.
Johnson City.
Chatham.
Argyle.
Ballston Spa.
Liberty.
Henrietta Grange 817, of West Henrietta.
Ossining.
Cortland.
Board of Supervisors, Erie County.
Hornell.
Schenectady.
Greenwich.
Poughkeepsie.
New Rochelle
Yonkers.
Union Springs.
Binghamton.
Hoosick Falls.
Board of Supervisors, Rockland County.
Dunkirk.
Piermont.
Fairport.
Frankfort.
Skaneateles.
Arkport.
Weedsport.
Goshen.
Bronxville.
Youngstown.
Tarrytown.
Rye.
Briarcliff.
Pleasant Valley.
East Rochester.
Brownville.
Schaghticoke.
Ulster Grange 969, of Ulster Park.
Fayetteville.
Amenia.
Tuckahoe.
Geneva.
Beacon.
Utica.
Camden.
Mechanicville.
Ardsley.
Niagara Falls.
White Plains.
Fishkill.

Middlebury.
Cohoes.
Williamsville.
Mt. Morris.
Canaseraga.
Pearl River.
Pike, Village of.
Pike, Town of.
Orangeville.
Java.
Eagle.
Gainesville.
Saratoga Springs.
Covington.
Ithaca.

26 "EXHIBIT C" ATTACHED TO AFFIDAVIT OF FRANKLAND BRIGGS.

John P. O'Brien,
Corporation Counsel, and

M. Maldwin Fertig,
Assistant Corporation Counsel,
For The City of New York.

Henry J. McClelland,
2 Rector Street, New York City,
For Charles Cole Hancock.

D. W. Steele, Jr.,
280 Broadway, New York City.

M. H. Winkler,
59 Wall Street, New York City.

Arthur Wilmott,
1138 East 37th Street, Brooklyn, New York,
Secretary, Flat Lands Property Owners' Associat

F. C. Wandmacker,
1290 New York Avenue, New York City,
Secretary, Flatbush Taxpayers' Association.

Jules H. Baer,
299 Broadway, New York City,
For New York Society for The City of New Yor

F. S. Clevenger,
256 Prospect Place, Brooklyn, New York.

F. B. De Berard,
Woolworth Building, New York City,
Director of Research, Merchants' Association
York.

Frank De Palma,
545 East 3rd Street, Brooklyn, New York,
For Flatbush Chamber of Commerce.

Charles A. Du Bois,
3551 Broadway, New York City,
For Washington Heights Taxpayers' Association.

Edward P. Doyle,
217 Broadway, New York City,
For Real Estate Board.

Mrs. Henry A. Hicks,
146 East 48th Street, New York City,

Mrs. J. C. Kurr,
For League Riverside Park.

J. W. Lavane,
431 First Street, Brooklyn, New York.

Henry G. Opdyke,
1270 Broadway, New York City,
Director, Broadway Association.

J. M. Richardson,
2 Columbus Circle, New York City,
President, Tulite Auto Bulb Company.

John V. Sheridan,
3220 Decatur Avenue, Bronx, New York,
For Bronx Subscribers.

Frank E. Tilley,
8919 Eighth Avenue, New York City,
For Homestead Civic Association.

J. Stewart Wilson,
137th Street and Third Avenue, New York City,
For Bronx Board of Trade.

Olin J. Stevens,
Stevens Fuel Company, Bronx, New York.

Mrs. Thayer Iaccaci.

Mr. A. C. Hume,
547 Fifth Avenue, New York City.

Dr. Edward E. Hicks,
For Medical Society of Kings County.

William N. Parks,
Chairman, Committee on Telephones,
Flatbush Taxpayers' Association.

James Skinner,
Treasurer, E. W. Bliss Company,
Brooklyn, New York.

George R. Branson.

H. J. McCann,
President, H. J. McCann Company.

Edward A. Kendrick,
President, Redfield-Kendrick-Odell Company.

Milton J. Budlong,
President, New York Motors Corporation.

Stewart Browne,
280 Broadway, New York City.

William S. Heissenbuttel,
621 East 19th Street, Brooklyn, New York.

Shearman & Sterling (by P. F. W. Ruthers),
55 Wall Street, New York City,
28 For Consolidated Gas Company of New York.

(Attack only company's principles of depreciation.)

29 District Court of the United States, Southern District of New York.

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

STATE OF NEW YORK,
County of New York, ss:

William Thomas Knight, being duly sworn, says:

I have been employed by the plaintiff continuously since the year 1900, and since the year 1911 have been a Special Agent in the Commercial Department of that Company and have had since said year and still have charge as such Special Agent of all contracts made by the plaintiff for the furnishing of telephone service to the various boards, departments and offices of The City of New York in the Boroughs of Manhattan, Bronx and Richmond.

Since January 1, 1905, to and including the year 1921, the plaintiff Telephone Company has at all times allowed to The City of New York upon service contracted for by it a discount of 25% from the regular schedule rates charged by the plaintiff to its subscribers gen-

rally for the installation and maintenance of telephone lines and quipment and for the right to send local messages thereover.

The situation as regards the contracts between the plaintiff and The City of New York for telephone service for its various 0 boards, departments and offices for the year 1922 is as follows:

Such contracts are divided into two classes, commonly known as lanket contracts and non-blanket contracts. The non-blanket are hose where the equipment used is small and consist generally of one irect line or one switchboard. There are 49 of these non-blanket ontracts in the Boroughs of Manhattan, Bronx and Richmond, and he average annual charge thereunder is less than $1,000 per annum. The aggregate charges for the year 1921 under all of said non-blanket ontracts was less than $16,000 for local exchange service and equipent.

The important contracts are the blanket contracts and these cover elephone service for the principal departments of the City, such as he Police, Fire, Health and Education departments. There are 51 f these contracts, aggregating in the year 1921 for local exchange ervice and equipment to the amount of $238,258.15. The blanket ontracts for the year 1922 have not yet been formally executed and ompleted. Two important contracts; namely, those for the Police epartment and Board of Education have not yet been prepared or resented to the City. Nineteen of such proposed contracts have been repared and signed by the Company and presented to the various epartments affected for signature by the proper officers but none of hese 19 proposed contracts have as yet been executed and returned to he Company. In the remaining 31 cases the contracts have been gned and returned to the Company from the various departments of he City affected but in none of these cases have the contracts yet been ccepted and registered by the Comptroller of The City of New York, ho, up to the present time, has refused to so accept and register them. The various departments affected are not authorized to 1 make payments direct to the Company and the Comptroller will not make payments to the Company until the contracts re so registered. No payment has as yet been received on account of ny service rendered to any of the City departments since January 1, 922, with the exception of the New York Botanical Gardens and the ew York Zoological Society, which under the law are permitted to ake their payments direct to the Company and not through the omptroller.

In each of the proposed 51 blanket contracts referred to there s an express provision that the service shall be paid for by The City f New York monthly. These proposed contracts for the year 1922 ll fix the rates to be charged to The City of New York for local exhange service and equipment at 25% less than the rates now being harged by the Company to subscribers generally for similar servce. For all telephone service furnished by the Company to the arious boards, departments and officers of said City over 90% of the harges therefor are for local exchange service and equipment.

WM. THOS. KNIGHT.

Subscribed and sworn to before me this 7th day of April, 192
[SEAL.] LINCOLN JONES,
Notary Public, Kings Co., No.

Cert. Filed in N. Y. Co. No. 50.
Kings Co. Register No. 4004.
N. Y. Co. Register No. 4045.

32 District Court of the United States, Southern District of
York

In Equity.

No. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

against

WILLIAM A. PRENDERGAST et al., Defendants.

STATE OF NEW YORK,
County of New York, ss:

Alexander F. Ormsbee, being duly sworn, says:

I have been employed by the plaintiff continuously since the
1897, and since the year 1908 have been a Special Agent in the
mercial Department of that Company and have had since said
and still have charge as such Special Agent of all contracts mad
the plaintiff for the furnishing of telephone service to the va
boards, departments and offices of The City of New York in the
oughs of Brooklyn and Queens.

Since January 1, 1905, to and including the year 1921, the pl
tiff Telephone Company has at all times allowed to The City of
York upon service contracted for by it a discount of 25% from
regular schedule rates charged by the plaintiff to its subscribers
erally for the installation and maintenance of telephone lines
equipment and for the right to send local messages thereover.

The situation as regards the contracts between the plai
33 and The City of New York for telephone service for its va
boards, departments and offices in the Boroughs of Brool
and Queens for the year 1922 is as follows:

Such contracts are divided into two classes, commonly know
blanket contracts and non-blanket contracts. The non-blanket
those where the equipment used is small and consist generally of
direct line or one switchboard. There are 93 of these non-bla
contracts in the Boroughs of Brooklyn and Queens, and the ave
annual charge thereunder is less than $1,000 per annum. The
gregate charges for the year 1921 under all of said non-blanket
tracts was less than $12,000 for local exchange service and equipm

The important contracts are the blanket contracts and these c
telephone service for the principal departments of the City, suc
the Police, Fire, Health and Education departments. There ar

of these contracts, aggregating in the year 1921 for local exchange service and equipment to the amount of $117,186.27. The blanket contracts for the year 1922 have not yet been formally executed and completed One important contract, namely, that for the Board of Education has not yet been prepared or presented to the city. Thirteen of such proposed contracts have been prepared and signed by the Company and presented to the various departments affected for signature by the proper officers but none of these 13 proposed contracts have as yet been executed and returned to the Company. In the remaining 6 cases the contracts have been signed and returned to the Company from the various departments of the City affected but in none of these cases have the contracts yet been accepted and registered by the Comptroller of The City of New York, who, up to the present time, has refused to so accept and register them. No payment has as yet been received on account of any service rendered to any of the City
34 departments since January 1, 1922, with the exception of the Brooklyn Botanic Garden and the Brooklyn Museum, which under the law are permitted to make their payments direct to the Company and not through the Comptroller.

In each of the proposed 19 blanket contracts above referred to there is an express provision that the service shall be paid for by The City of New York monthly. These proposed contracts for the year 1922 all fix the rates to be charged to The City of New York for local exchange service and equipment at 25% less than the rates now being charged by the Company to subscribers generally for similar service. For all telephone service furnished by the Company to the various boards, departments and offices of said City over 90% of the charges therefor are for local exchange service and equipment.

(Sd.) ALEXANDER F. ORMSBEE.

Subscribed and sworn to before me this 7th day of April, 1922.

(Sd.) LINCOLN JONES,
[SEAL.] *Notary Public, Kings Co., No.* 3.

Cert. filed in N. Y. Co. No. 50.
Kings Co. Register No. 4004.
N. Y. Co. Register No. 4045.

Endorsed: Filed U. S. District Court, S. D. of N. Y., April 8, 1922.

35 *Memorandum of Judge A. N. Hand.*

United States District Court, Southern District of New York.

E. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST et al., Constituting the Public Servic Com., etc., and Ledyard P. Hale, Counsel to Commission, an Charles D. Newton, Atty. Genl. State of New York, Defendants.

The public is adequately represented in this suit without the inte vention of the City.

Motion denied.

AUGUSTUS N. HAND,
D. J.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Apr. 8, 192

36 *Order Denying Motion to Intervene.*

At a Stated Term of the District Court of the United States for th Southern District of New York, in the Second Circuit, Held i the Post Office Building, in the Borough of Manhattan, in the Cit of New York, County and State of New York, on the 29th Day o July, 1922.

Present: Hon. Augustus N. Hand, United States District Judge.

In Equity.

No. 23-253.

NEW YORK TELEPHONE COMPANY, a Corporation, Complainant,

against

WILLIAM A. PRENDERGAST, WILLIAM R. POOLEY, CHARLES VA Voorhis, Oliver C. Semple, Charles G. Blakeslee, the Persons Con stituting the Public Service Commission of the State of New York Ledyard P. Hale, Counsel to the said Public Service Commission and Charles D. Newton, Attorney General of the State of New York, Defendants.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed, that the motion of The City of New York to intervene as a party defendant be and the same hereby is denied.

AUGUSTUS N. HAND,
U. S. District Judge.

37 *Petition and Allowance of Appeal.*

District Court of the United States, Southern District of New York.

NEW YORK TELEPHONE COMPANY, a Corporation, Complainant,

against

WILLIAM A. PRENDERGAST et al., Constituting the Public Service Commission, and Charles D. Newton, as Attorney General of the State of New York, Defendants; The City of New York, Appellant.

The Petition of The City of New York shows to this Court:

First. That this is a suit in equity to have declared confiscatory the order made by the Public Service Commission effective April 1, 1922 on the ground that the rate fixed by that order for telephone service to consumers in The City of New York is confiscatory. The defendants filed their answers denying the material allegations of the bill of complaint.

Second. The above named appellant, The City of New York feeling aggrieved by the said decree entered in the above entitled cause on the 29th day of July, 1922, does hereby appeal from said decree to the Suprmee Court of the United States for the reasons set forth in the assignment of errors herewith filed, and prays that its appeal be allowed and citation be issued as provided by law, and that
38 a transcript of the record of the proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Supreme Court at Washington, D. C., under the rules and regulations of such court made and provided, and your petitioner prays that an order be made dispensing with security.

Dated, New York, August 7, 1922.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Appellant, The City of New York.

39 Appeal allowed and bond to cover costs of appeal dispensed with.

Dated, New York, August 7, 1922.

J. M. MAYER,
U. S. C. J.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Aug. 7th, 1922.

40 *Assignment of Errors.*

District Court of the United States, Southern District of New York

NEW YORK TELEPHONE COMPANY, a Corporation, Complainant,

against

WILLIAM A. PRENDERGAST et al., Constituting the Public Service Commission, and Charles D. Newton, as Attorney General of the State of New York, Defendants; The City of New York, Appellant.

Now comes The City of New York and files the following assignment of errors upon which it will rely upon the prosecution of its appeal in the above entitled cause from the decree made by this Honorable Court on the 29th day of July, 1922.

1. The Court erred in holding that there was no necessity for making The City of New York a party to this suit since the Attorney General and the Public Service Commission already repre-
41 sented the people, and it was an abuse of discretion on the part of the District Court in refusing to allow The City of New York to intervene.

2. The Court erred in holding that The City of New York has no interest in this litigation within the meaning of Equity Rules Nos. 37 and 38.

3. That the District Court of the United States erred in holding that The City of New York is not a proper party defendant within the meaning of Equity Rules Nos. 37 and 38.

4. The District Court of the United States erred in holding that The City of New York is not a necessary party within the meaning of Equity Rules Nos. 37 and 38 for all the purposes of determining the issues in this litigation.

5. The District Court of the United States erred in denying the application of The City of New York for an order permitting it to intervene as a party defendant in this litigation in that it deprived The City of New York of proprietary rights without due process of law, and denied to the petitioner a substantial right.

Dated August 7, 1922.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Appellant, The City of New York.

Municipal Building, New York City.

Endorsed: U. S. District Court, S. D. of N. Y. Filed Aug. 7th, 1922.

42 United States Supreme Court.

THE CITY OF NEW YORK, Appellant; CHARLES D. NEWTON, as Attorney General of the State of New York, et al., Defendants,

against

NEW YORK TELEPHONE COMPANY.

It is hereby stipulated and agreed, by and between the respective parties hereto that the foregoing is a true transcript of the record of said District Court in the above-entitled matter as agreed on by the parties, being the following papers, to wit:

1. Bill of complaint, and plaintiff's affidavits on application for interlocutory injunction.

2. Subpœna.

3. Petition of City of New York for leave to intervene as a party defendant, dated April 3, 1922.

4. Affidavits of plaintiff in opposition to said petition of the City of New York.

5. Opinion of Judge A. N. Hand, dated April 8, 1922.

6. Order dated July 29, 1922.

7. Petition and allowance of appeal.

8. Assignment of errors.

9. Citation.

Dated, New York, August 29th, 1922.

JOHN P. O'BRIEN,
Solicitor for Appellant, The City of New York.
CHAS. T. RUSSELL,
Solicitors for Appellee.

43 District Court of the United States, Southern District of New York.

E. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Complainant,

against

WILLIAM A. PRENDERGAST et al., Constituting the Public Service Commission, and Charles D. Newton, as Attorney General of the State of New York, Defendants; The City of New York, Appellant.

E. 23-252.

Citation.

Original.

U. S. District Court, S. D. of N. Y. Filed Aug. 15, 1922.

John P. O'Brien, Corporation Counsel, Solicitor for Appellant, The City of New York, Municipal Building, New York City, Borough of Manhattan.

Service of a copy of within citation is hereby admitted.
Copy received August 15, 1922.

CHAS. T. RUSSELL,
——— ———,
Solicitors for Complainant.

44 By the Honorable Julius M. Mayer, one of the U. S. Circuit Judges of the Second Circuit, to the New York Telephone Company, Greetings:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the City of Washington, D. C., in the District of Columbia, on the 6th day of September, 1922 pursuant to an appeal filed in the Clerk's office of the United States District Court for the Southern District of New York, wherein The City of New York is the appellant in the suit in equity, and you are respondent to show cause, if any there be, why the decree herein entered on the 29th day of July, 1922, in the United States District Court, for the Southern District of New York, should not be corrected and reversed and why speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in The City of New York, in the District above named, this 7th day of August, in the year of Our Lord, one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-seventh.

J. M. MAYER,
U. S. Circuit Judge, 2nd Circuit.

45 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Equity. 23-252.

NEW YORK TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM A. PRENDERGAST and Others, Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this second day of September, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-seventh.

[Seal of the District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,
Clerk.

[Endorsed:] United States District Court, Southern District of N. Y. N. Y. Telephone Company, Plaintiff, vs. William A. Prendergast et al., Defendants. Transcript of record on appeal to the United States Supreme Court.

Endorsed on cover: File No. 29,138. S. New York D. C. U. S. Term No. 588. The City of New York, appellant, vs. New York Telephone Company. Filed September 12th, 1922. File No. 29,138.

Office Supreme Co
FILE
JAN 31 1
WM. R. STA

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 588.

THE CITY OF NEW YORK,
Appellant,

against

NEW YORK TELEPHONE COMPANY,
Appellee.

Brief on Behalf of Appellant

GEORGE P. NICHOLSON,
Corporation Counsel,
Solicitor for Appellant,
The City of New York,
Municipal Building, New York.

M. MALDWIN FERTIG,
HARRY HERTZOFF,
Of Counsel.

(19185) Stillman Appellate Printing Co.

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Supreme Court of the United States

OCTOBER TERM—1922.

No. 588.

THE CITY OF NEW YORK,
Appellant,

against

NEW YORK TELEPHONE COMPANY.

BRIEF IN BEHALF OF APPELLANT
The City of New York.

Statement.

This appeal was brought by The City of New York to review an order of the District Court for the Southern District of New York, filed and entered July 29, 1922, denying an application of The City of New York for leave to intervene as a party defendant in the action commenced on March 29, 1922, in the said District Court, and brought to have declared confiscatory, the orders of the Public Service Commission dated March 3, 1922.

The relief prayed for in the bill of complaint in suit read as follows (p. 8):

> "1st. That the rates prescribed in said orders of March 3, 1922 (Exhibit E and Exhibit F, attached hereto), be decreed to be confiscatory, in violation of the Constitution of the United States, and the orders imposing the same to be void;
>
> "2nd. That defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents and employees to observe or put in force on April 1, 1922, or to observe or keep in force thereafter, the rates for telephone service prescribed by said orders of March 3, 1922, or either of said orders;
>
> "3rd. That the defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy for disregarding the rates prescribed by said orders or either of them."

A temporary injunction was granted and is now before this Court (Case No. 542 of this term).

In the month of October, 1920 (p. 96), hearings were instituted before the Public Service Commis-

sion of the State of New York in Case No. 7720, affecting telephone rates for local exchange service in The City of New York, and Exhibit E (p. 26) was the order made reducing these rates by 5 per cent.

The City of New York appeared regularly at each and every hearing held by the Commission. At various hearings, particularly in the beginning, individuals appeared for themselves and for public bodies and associations and participated to a very slight extent in the examination of witnesses; but for many months there was no representation in behalf of the subscribers other than The City of New York (p. 96). It is admitted by appellee (p. 100) that "no testimony has as yet been offered in said case, No. 7720, by anyone other than The City of New York and this plaintiff."

Several temporary orders were made by the Public Service Commission; one, increasing rates in New York City for local exchange service over 28% (Exhibit "C," p. 21), then reducing such rates 10% (Exhibit "D," p. 24), and, finally, further reducing such rates 5% (Exhibit "E," p. 26).

Expert services of a public utility consultant, and of an eminent telephone engineer, and under them staffs of well-trained and highly qualified engineers and accountants were retained by The City of New York (p. 96). With the aid of these technical assistants, the City conducted a cross-examination of the witnesses produced by the Telephone Company, and for months presented evidence to the Commission consisting of engineering, accounting and statistical data upon

many phases of the case, embracing, among other things, cost, valuation and depreciation of appellant's property in The City of New York; proof relating to incoming revenues from various classes of service rendered by the appellant, operating expenses covering particularly maintenance, traffic, cost and annual allowance for depreciation. The City of had in course of preparation further proof (p. 96).

In making these studies, it was necessary for experts to make expensive studies of complicated accounts and engineering records, necessarily involving the expenditure of many thousands of dollars (p. 96).

It was not until the 10th day of November 1921, (p. 99) that the so-called State case No. 377 was commenced. The Governor recommended the appearance of the Attorney General in this case and a statute was passed on February 9, 1922 (Chap. 15, Laws of 1922).

The said statute authorizing the Attorney General to appear, it will be noted, was in Case No. 377 State-wide (p. 102). The City case was then pending, and had been pending for considerable time. The Legislature authorized the appearance of the Attorney General "In the proceeding heretofore instituted by the Public Service Commission and entitled 'In the matter of the hearing of the motion of the Commission as to rates, charges and rentals, and the regulations and practices affecting rates, charges and rentals of the New York Telephone Company." (p. 102).

It is true that the State-wide case No. 377, when it was instituted on the 10th day of November,

1921, comprehended in scope all of the State of New York, but the fact nevertheless remains that rates for The City of New York though incorporated in the State-wide order (Exhibit "F", p. 28) were based upon orders made in the New York City case (No. 7720) and on the terms and conditions therein set forth. The State-wide order sets forth rates for ten groups of territories, and then follows the eleventh group for The City of New York in the following language:

> "Group XI. New York City (comprising the boroughs of Manhattan, The Bronx, Brooklyn, Queens and Richmond).
>
> The rates for this group shall be as prescribed in the order of March 3, 1922, in Case No. 7720 upon terms and conditions as therein set forth."

The magnitude of the task may be indicated by the fact that the number of telephone stations in The City of New York was 1,011,014, and 448,680 in the State of New York outside of The City of New York (p. 38); that in The City of New York there were 450,000 subscribers and 337,000 in the State of New York, outside of The City of New York (p. 38); that the capital required for additional property and construction for 1922 was $42,247,800 for the whole of the State of New York of which $36,436,600 was for The City of New York; that the revenues for 1921 for local exchange service was $67,852,022, and total revenue $80,032,204, and alleged net telephone ex-

pense $71,857,024; that the net revenue for The City of New York for local exchange service for the year 1921 was about $43,000,000 (affidavit of Arthur D. Welch, p. 67, showing effect of a 5% reduction to be about $2,150,000).

The scope and magnitude of the research and investigations required is indicated not alone by the figures just given, but by the moving affidavits annexed to the bill of complaint (affidavits of James A. Stewart, p. 37; Jacob S. Wiley, p. 40; Andrew Sangster, p. 49; George W. Whittemore, p. 57; Halbert P. Gilette, p. 60; Harry M. Addinsell, p. 64; Arthur D. Welch, p. 66).

I.

This is a final order within the holdings of the decisions.

In Odell vs. Batterman, 223 Fed. Rep., 292, it was held:

> "Under the decisions an adjudication is a final appealable order if it involves the determination of a substantial right against a party in such a manner as leaves him no adequate relief except by recourse to appeal."

In Central Trust Company vs. United States Light and Heating Co., 233 Fed. Rep., 420, it was held that an order fixing counsel fees was final and appealable.

The Court said:

> "The order was final and conclusively adjudicated something over which the Court had jurisdiction and which arose in the progress of the litigation although distinct from the general subject of the suit."

II.

The City of New York has a direct and material interest in the orders of the Public Service Commission, dated March 3, 1922, reducing the rates by five per cent. for telephone service to subscribers within The City of New York.

The situation as regards contracts between appellee and The City of New York for telephone service for its various boards is set forth in the affidavit of William T. Knight in behalf of the appellee (p. 109). In substance it recites that there are 49 minor contracts covering an annual charge of less than a thousand dollars per annum each; that the aggregate charges for the year 1921 for these contracts was less than $16,000 for local exchange service and equipment; that the important contracts are the so-called blanket contracts of which there are 51 in number, aggregating $238,258.15 for the year 1921. As for the year 1922, it is asserted that two of them have not yet been prepared or presented to the City; 19 of them have been prepared and signed by the company and

presented to the various departments affected for signature by the proper officers, but that none of these 19 proposed contracts have as yet been executed and returned to the company; that in the remaining 31 cases the contracts have been signed and returned to the company from the various departments of the City affected but that in none of these cases have the contracts yet been accepted and registered by the Comptroller of The City of New York, who up to the time of the making of the affidavit, to wit, April 7, 1922, has refused to accept and register them. It is further asserted that the various departments affected by the latter 31 contracts are not authorized to make payments direct to the company and the Comptroller will not make payments to the company until the contracts are so registered.

The rates charged The City of New York are those charged according to the schedule of rates filed except that the City receives a discount of 25 per cent.

As for the reduction of 25 per cent. allowed The City of New York, its nature is set forth in the affidavit of Frankland Briggs in behalf of the company (p. 101):

> "The discount of 25% has been and is allowed to The City of New York by this plaintiff (appellee) and is granted voluntarily. While there is no legal obligation on its part to allow such discount, nor is there anything in its schedules of rates or rules and regulations, on file with the Public Service Com-

mission relating to the giving of such discount, or the amount thereof, and such discount is merely permitted by the provisions of Subdivision 3 of Section 92 of the Public Service Commissions Law, it is granted to The City of New York as a matter of favor, the plaintiff company expects and intends to continue such discount so long as it is possible and proper for it to do so. The City of New York has given the plaintiff no suggestion or intimation that it wishes such discount discontinued hereafter. The amount for which The City of New York was billed by this plaintiff for exchange telephone service and equipment furnished to its various boards, departments and offices during the year 1921 was $432,099.91, and had such discount not been allowed to the said city, the amount for which it would have been billed for such service and equipment would have been $576,133.32."

Similar discounts are allowed to other municipalities in the State of New York.

Subdivision 3 of Section 92 of the Public Service Commissions Law provides as follows:

"3. No telegraph corporation or telephone corporation subject to the provisions of this chapter shall, directly or indirectly, give any free or reduced service, or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this state, except to its officers, em-

ployees, agents, pensioners, surgeons, physicians, attorneys-at-law and their families; to persons or corporations exclusively engaged in charitable and eleemosynary work and ministers of religions; to officers and employees of other telegraph corporations and telephone corporations, railroad corporations and street railroad corporations. But this subdivision shall not apply to state, municipal or federal contracts."

As for the 19 of the largest contracts for the year 1922, can there be any question that the City has a direct financial interest in the rates charged for the service covered by them? It is true that the net charge to the City of New York is considerably lower than that made to others, but the fact nevertheless remains that the amount of charge is computed by figuring 75% of the schedule of rates fixed by the commission. Reference is made to the failure of the Comptroller to accept and register these contracts and to the fact that the various departments affected are not authorized to make payments direct to the company; and it is claimed that the Comptroller will not make payments to the Company until the contracts are so registered. Nowhere, however, do they assert that the City is not liable for payment upon these contracts. As for the other unexecuted contracts, appellee proposes to give this "voluntary" reduction so long as "it is possible and proper for it to do so." At any time it could withdraw this voluntary reduction and leave the City to pay one hundred per cent. of the schedule rate.

Moreover, the City has a direct, immediate and substantial interest in the so-called "temporary rates" *heretofore in effect* under orders of the Public Service Commission, dated March 17, 1921, June 16, 1921, and March 3, 1922 (pp. 21, 24, 26), wherein all rates over and above those in effect September 16, 1919, were put in force under bonds, subject to final determination by the Commission (pp. 25, 27) or in the event that the proceeding before the Public Service Commission is judicially reviewed (p. 23).

Under the circumstances, it would appear to be idle to contend that in view of this situation, The City of New York has no direct financial interest in the making of schedule rates for telephone service in The City of New York. This case is entirely different from that of the *Consolidated Gas Company vs. Newton,* 256 Fed., 238; 260 Fed., 1022; 253 U. S., 219. In the latter case the rate charged to the City was not attacked or involved.

III.

This Court has jurisdiction of the entire case and of all questions involved in it which includes the question as to whether or not The City of New York should have been permitted leave to intervene.

This appeal was taken directly to this Court from the decree of the District Court, Southern District of New York, because of the provisions of

Section 238 of the Judicial Code thereof, which provides in part as follows:

> "Appeals and writs of error may be taken from the District Court * * * direct to the Supreme Court in the following cases * * * and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

Section 128 of the Judicial Code provides:

> "The Circuit Court of Appeals shall exercise jurisdiction to review by appeal or writ of error, final decisions in the District Court * * * in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court * * *."

In Brolan vs. U. S., 236 U. S., 216, the Court said:

> "Our jurisdiction to directly review depends upon the constitutional question, since the other matters relied upon are as a general rule within the exclusive jurisdiction of the Circuit Court of Appeals * * * although if power to review attaches to the case because of the constitutional question, that authority gives rise to the duty to determine all the questions involved" (Burton vs. U. S., 196 U. S., 283; Williamson vs. U. S., 207 U. S.,

425, at p. 432; Billings vs. U. S., 232 U. S., 261, at p. 276).

In the Williamson case, *supra,* the Court said:

> "If there be a constitutional question adequate to the exercise of jurisdiction the duty exists to review the whole case."

In *Burton vs. United States,* 196 U. S., 286, at 295, where a constitutional question was raised which, although not decided in favor of appellant, the Court said was not frivolous, it was held:

> "* * * the statute grants to this Court jurisdiction to issue the writ of error directly to the District Court, and then to decide the case without being restricted to the constitutional question."

IV.

Abuse of discretionary power is reviewable by this Court.

It is fundamental that discretion will not be ordinarily reviewed; but where under the circumstances it appears to have been exceeded or abused the general principle will not apply. *In Charles D. Newton, Attorney General of the State of New York, et al., against Consolidated Gas Company of New York, decided May 15, 1922, 66 L. Ed.*

U. S. Supreme Court Advance Opinions 1921-1922, p. 507, it was held that the discretionary power of a Federal Court under Equity Rule 68, to fix the compensation of a master, does not extend to arbitrary and unreasonable action; in that case it was claimed discretion was abused in that the allowance made for the master's fees was excessive. Justice McReynolds, speaking for the Court, said:

> "Discretion within the intendment of the rule is a judicial one; it does not extend to arbitrary and unreasonable actions; and our review is limited to the question of its improvident exercise * * *."
>
> * * * * * *
>
> "Ordinarily we may not substitute our judgment for its deliberate conclusions nor interfere with the exercise of its discretion. But when that Court falls into error which amounts to abuse of discretion and the cause comes here by proper proceedings appropriate relief must be granted."

If this Court has the power to review an order based upon abuse of discretion as was held in the Consolidated Gas Company case, *supra,* there must necessarily be the right to bring the question up for review. It would appear that an appeal must lie from the order denying leave to intervene or the applicant for intervention cannot appeal at all, for after he has been excluded from the case by the final action of the Court on his application

or petition he is not a party to the action and cannot appeal from a final judgment entered between those who are parties (*People vs. Pfeiffer,* 59 California, 89; *Lorber vs. Connor,* 82 Iowa, 739; 47 N. W., 1006).

V.

Under all the circumstances as disclosed by the record the denial of the application for leave to intervene by The City of New York was an abuse of discretion upon the part of the District Court.

In all of the quasi judicial proceedings for the purpose of regulating rates the public service commission acts as a judicial body, but at the same time as an administrative body and through the help of its experts and staff may submit such testimony as it desires.

In this case, however, not a word of testimony was offered by anyone other than the appellee in its own interest and The City of New York on behalf of the users of telephone service. The City of New York, therefore, acted as an arm of the Public Service Commission and for the City's benefit and the benefit of the public supplied the testimony for the public good. At great expense of money and effort The City of New York conducted this extraordinarily difficult, huge and complex proceeding. What harm could come to anyone if the City were permitted to intervene? As was said in *Berkey vs. Mills Trust Co.,* 140 Fed., 202, "The petitioner

asks simply that he may be permitted to submit his contention to the Court, and I do not see how the interest of the other parties will be jeopardized by allowing him to do so. That he is a necessary party is not apparent but that he is a proper party is sufficiently clear."

It will probably be urged that if the City is permitted to intervene that any one of the large number of subscribers of the appellee might demand to be allowed to join as a party to the proceedings; the obvious reply is, that no other parties have sought to intervene; that no other parties actively participated in the hearing before the Commission or offered any testimony and that the burden was carried throughout by The City of New York.

We assert that after participation of the character and extent of that of The City of New York in a proceeding of this magnitude, a refusal to permit it to intervene in judicial proceedings which involve practically the same questions and the same facts, is purely arbitrary. After great expenditures of money and effort the removal of forum to the Federal Courts upon claim of confiscation by a public utility would completely eliminate consumers and their representatives.

CONCLUSION.

We respectfully submit that the order of the District Court, denying The City of New York leave to intervene was arbitrary and an abuse of discretion and should be reversed with costs to appellant.

Dated New York, January 29, 1923.

Respectfully submitted,

GEORGE P. NICHOLSON,
Corporation Counsel,
Solicitor for Appellant,
Municipal Building,
New York.

M. MALDWIN FERTIG,
HARRY HERTZOFF,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 588.

THE CITY OF NEW YORK,
Appellant,

against

NEW YORK TELEPHONE COMPANY,
Appellee.

BRIEF OF THE CITY OF NEW YORK IN ANSWER TO APPELLEE'S BRIEF TO DISMISS.

GEORGE P. NICHOLSON,
Corporation Counsel,
Solicitor for Appellant,
The City of New York,
Municipal Building, New York.

M. MALDWIN FERTIG,
HARRY HERTZOFF,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM—1922.

THE CITY OF NEW YORK, Appellant, against NEW YORK TELEPHONE COMPANY, Appellee.	Cal. No. 588.

BRIEF OF THE CITY OF NEW YORK IN ANSWER TO APPELLEE'S BRIEF TO DISMISS.

ANSWER TO POINT I.

I. The order appealed from is a final order.

The making of this final order was a determination or adjudication of a substantial right against the appellant in such manner as to leave it no adequate relief except by recourse to an appeal.

Gay vs. Hudson River El. Co., 184 Fed., 689;

Matter of Farmers' L. & T. Co., 129 U. S., 206;
Brush Electric Co. vs. Electric Imp. Co., 51 Fed., 557, 561.

A final order is one which disposes of the entire controversy between the parties.

La Bourgoyne, 210 U. S., 95, 112.

In this case, Mr. Justice WHITE said:

> "The rule announced in these cases, for determining whether, for the purposes of an appeal, a decree is final is in brief whether the decree disposes of the entire controversy between the parties * * *."

In *Heike vs. United States*, 217 U. S., 423, 429, Mr. Justice DAY defined "final judgment" as follows:

> "The definition of a final judgment or decree was tersely stated by Mr. Justice Waite in St. Louis Iron Mining & S. R. R. Co. vs. Express Co., 108 U. S., 24, 28, in these terms: 'A decree is final for the purposes of an appeal to this Court when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.'"

The order appealed from impaired a substantial right of the City and, therefore, it is a final order.

> Central Trust Co. vs. United States Light and Heating Co., 233 Fed., 420;
> Odell vs. Batterman, 223 Fed., 292, 295;
> Gas & Electric Securities Co. vs. Manhattan & Queens Traction Corporation, 266 Fed., 625.

II. The cases mentioned by appellee are not in point.

Ex parte Cutting was an application for a writ of mandamus commanding the judges of the Circuit Court to allow petitioner an appeal from the decree in the cause and a *supersedeas*. No appeal was asked of the Circuit Court as a party to the suit. The petitioner sought only to become a party to the appeal. Mr. Chief Justice WAITE said:

> "They filed their petition to be made defendants in the suit, but it was never granted. Not only was no express order made to that effect, but there is nothing to show that they were ever in any manner recognized as parties, or that they ever supposed they were parties" (94 U. S., 14, 20).

In *Credits Commutation Co. vs. United States*, the petitioner's right was, in the language of the Court, " * * * nothing more than a contingent, speculative, future possibility."

Ex parte Leaf Tobacco Board of Trade was a case where the petitioners, instead of appealing from the order refusing to allow petitioner to become a party defendant, sought by mandamus to have the judgment in the case reviewed and the Court held that "one who is not a party to the record and judgment is not entitled to appeal therefrom."

III. The instant case is in no way analogous to the foregoing.

The interest of The City of New York is a substantial interest and not a mere contingent, speculative and future possibility as was the interest of the petitioner in the Credits Commutation Company case, *supra*. The City has a real, substantial interest and is directly and actually interested that the burden of the charges for telephone service rendered to it, shall be no greater than is reasonably necessary to pay the actual cost of the rendering of this service, plus a reasonable return upon the capital invested by the New York Telephone Company. The order refusing the City the right to become a party affects a substantial constitutional right of The City of New York and the people of The City of New York who are consumers of appellee and, therefore, the order is a final order and appealable.

ANSWER TO POINT II.

The cases mentioned on page 6 of appellee's brief are not in point.

The cases refer to instances in which the City's rate was not in question, and therefore the City was not allowed in the case because its rates were not challenged.

In the gas cases the rate charged to the City was 75 cents per M cubic feet and was covered by a separate statute.

The Gas companies merely applied for relief against the statutes which compelled them to supply gas to private consumers at 80 cents per M cubic feet, hence it was held that the City was not a necessary or proper party to the suits.

The instant case is one which is not comparable with any of the cases.

Abuse of discretionary power is reviewable by this Court.

One of the grounds of error in this appeal is that the lower Court abused its discretion in refusing appellant the right to become a party defendant.

The issue in the suit with reference to the City of New York arose out of a hearing which was based upon the application of the New York Telephone Company for an increase in rates.

The City of New York was recognized by the Public Service Commission throughout the hearings before that body without any objection by the Telephone Company, (but to the contrary, the company giving the City access to its records) and undertook the defense of the rates and incurred a large expense to take care of the interest of itself and other subscribers in the City of New York.

The orders attacked by the Telephone Company are two in number, the one in Case 7720 (Rec. p. 26) applying to subscribers in the City of New York, and that in case 377 (Rec. p. 28) applying to the State of New York outside of the City of New York.

In the recent case of Charles D. Newton, *et al.*, against Consolidated Gas Company, decided May 15, 1922, 66 L. Ed., 507, Mr. Justice McReynolds, speaking for the Court, said:

> "Discretion within the intendment of the rule is a judicial one; it does not extend to arbitrary and unreasonable actions; and our review is limited to the question of its improvident exercise * * *"
>
> * * * * * * *
>
> "Ordinarily we may not substitute out judgment for its deliberate conclusions nor interfere with the exercise of its discretion. But when that Court falls into error which amounts to abuse of discretion and the cause comes here by proper proceedings appropriate relief must be granted."

As was said by Lord Mansfield in Rex vs. Wilkes (1770, K. B.), 4 Burr, 2527, 2539:

> "Discretion, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule not by humour; it must not be arbitrary, vague and fanciful, but legal and regular."

In Berkey vs. Mills Trust Co., 140 Fed., 202, the Court said:

> "The petitioner asks simply that he may be permitted to submit his contention to the Court, and I do not see how the interest of the other parties will be jeopardized by allowing him to do so. That he is a necessary party is not apparent but that he is a proper party is sufficiently clear."

In Butler vs. Strickland-Tillman Hardware Co., (1914) 15 Ga. App., 193, 194, 82 S. E., 815, 816, the Court said:

> "After all, we must remember that the function of discretion which should be the prime consideration in any agreement either for its extension or for its limitation is, not merely to keep any part of our law free from rules, but 'to subserve and not to defeat substantial justice.'"

We assert that after participation of the character and extent of that of The City of New York in a proceeding of this magnitude, a refusal to permit it to intervene in judicial proceedings which involve practically the same questions and the same facts, is purely arbitrary. After great expenditures of money and effort the removal of forum to the Federal Courts upon claim of confiscation by a public utility would completely eliminate consumers and their representatives.

CONCLUSION.

We respectfully submit that the Order of the District Court, denying the City of New York leave to intervene was arbitrary and an abuse of discretion and should be reversed with costs to appellant.

Dated New York, February 15, 1923.

Respectfully submitted,

GEORGE P. NICHOLSON,
Corporation Counsel,
Solicitor for Appellant,
Municipal Building, New York.

M. MALDWIN FERTIG,
HARRY HERTZOFF,
of Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1922.

THE CITY OF NEW YORK, Appellant, CHARLES D. NEWTON, as Attorney General of the State of New York, et al., Defendants, *against* NEW YORK TELEPHONE COMPANY, Appellee.	Cal. No. 588.

Sirs—Please Take Notice that I will move the Supreme Court of the United States at Washington, D. C., pursuant to Rule 26 of the Rules of the Supreme Court of the United States, on Tuesday, the 6th day of October, 1922, at 12 o'clock noon, at the opening of said court for motions, or as soon thereafter as counsel can be heard, for an order advancing the above-entitled appeal on the

docket of said court for argument at the earliest particular date convenient to the Court.

Dated, New York, September 27th, 1922.

Yours, etc.,

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Appellant,
The City of New York,
Municipal Building, New York.

To CHARLES T. RUSSELL, Esq.,
STETSON, JENNINGS & RUSSELL, Esqs.
Solicitors for Appellee,
15 Dey Street,
New York.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1922.

THE CITY OF NEW YORK,
Appellant,
CHARLES D. NEWTON, as Attorney General of the State of New York, et al.,
Defendants,
against
NEW YORK TELEPHONE COMPANY,
Appellee.

To the Honorable Supreme Court of the United States:

The above named appellant respectfully moves to advance this cause on the docket of this Honorable Court pursuant to Rule 26, Subdivisions 6 and 7 of the rules of the Supreme Court of the United States.

The above entitled appeal was brought by The City of New York to review an order of the District Court for the Southern District of New York, filed and entered July 29, 1922, denying an application of The City of New York for leave to intervene as a party defendant in the action commenced on March 29, 1922, in the said District Court of the United States for the Southern District of New York, and brought to have declared confiscatory, the orders of the Public Service Commission dated March 3, 1922.

The City of New York was not made a party to this suit.

The relief prayed for in the bill of complaint in the action specifically reads as follows:

> "1st. That the rates prescribed in said orders of March 3, 1922 (Exhibit E and Exhibit F, attached hereto), be decreed to be confiscatory, in violation of the Constitution of the United States, and the orders imposing the same to be void;
>
> "2nd. That defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents and employees to observe or put in force on April 1, 1922, or to observe or keep in force thereafter, the rates for telephone service prescribed by said orders of March 3, 1922, or either of said orders;
>
> "3rd. That the defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy for disregarding the rates prescribed by said orders or either of them."

The orders, attacked so far as relates to the City of New York were based upon a series of hearings before the Public Service Commission in Case No. 7720, in which hearings and case the City of New York was an active participant and until shortly before the making of the order the only representative of the subscribers.

A temporary injunction is in force at the present time which restrains the defendants from enforcing the orders of March 3, 1922.

The defendants have taken an appeal to this Court (Cal. No. 542) from said injunction and a motion noticed for October 2, 1922, has been made to advance the argument for an early date.

It is therefore desirable that both these appeals be heard at the same time.

The number of subscribers in the City of New York is upwards of 450,000. There is no adequate remedy for the individual subscriber who is obliged to pay the rate demanded, submit to having his telephone cut off, or enter into litigation with this appellee at practically prohibitive expense. The number of citizens interested in this litigation as well as the amount involved is, therefore, unusually large.

The City of New York is the largest subscriber to telephone service of the New York Telephone Company in the City of New York, and the amount paid by it for telephone service during the year 1921 was $432,099.91.

The City of New York has engaged the necessary technical aid to handle the intricate, complex questions involved, and has incurred an expense of upwards of $100,000 in the preparation of the case before the Public Service Commission.

The telephone service as it is carried on in New York City is by far the largest and most complex

of any in the country. The property devoted to the telephone service is of many types, involves millions of parts, and is changing and increasing to meet the demands of the service. This property and the organization are devoted to furnishing not only the local exchange service but also the Interborough toll service, the local toll service from New York City to points outside, and the long distance toll service.

In conducting this case, it will become necessary to engage similar expert assistance, and again incur large expenditures. The magnitude of the case is such that however willing, able and liberal the Public Service Commission and the Attorney General may be in the conduct of the case, they can hardly afford to dispense with the active cooperation of The City of New York in this litigation. Litigation of this character is such as to heavily tax the energies of the very large, highly expert staff of the New York Telephone Company, which is continuously at work on the respective problems, and thoroughly familiar with them.

As illustrative of the many studies and researches that are required to be made and the expense thereof, a brief summary of the work required to be done in establishing the rates of annual depreciation is here given: To arrive at these percentages, it is necessary to analyze the company's construction records from the beginning down to date and determine from these records for each of the many classes of property, the gross amount of properties constructed each year, the gross amount of property retired, the gross amount of salvage realized

from plant or property retired, the cost of removing such plant and the net salvage realized. With these facts a series of complicated computations are involved to determine the proper and necessary annual expense of depreciation for each of the many classes of property, the life expectancy of each of these classes of property, the age of each class, the estimated salvage ratios to be expected from each class and the estimated reserve ratios required for each class of property, in order that proper provision for the ultimate retirement of each class of property at the end of its life may be provided for. Such investigation would involve the services of many expert telephone engineers and accountants for many months.

It is therefore imperative that the public side obtain all the assistance it can for the complete presentation of the subscribers' side of the case.

Furthermore, it is submitted that it is contrary to sound public policy to oust a municipality from participation in litigation arising out of rates fixed by a Commission after years of active, continuous and expensive effort by such municipality.

The appellee herein uses the streets of the City of New York and enjoys the protection of its fire, police, water and other departments. The charges for telephone service is a matter of serious consideration to the people of The City of New York, who are subscribers of the appellee, and affects their health, happiness, comfort and convenience.

No private subscriber is a party to this suit. The expense of litigating the questions involved is

so great that it is not within the power of any private consumer so to do.

A Special Master has been appointed to take the testimony and he is to commence hearings on October 16, 1922. The above appeal, according to its position on the Calendar, will probably not be reached for argument in the regular call of the docket during this term and if the appeal be not advanced by special order of this court it will be reached only after the trial of the action shall have been finished and the same shall have been terminated without the City of New York having had an opportunity to present its defense as a party defendant, and will have had no opportunity to present facts and arguments in support of the validity of the orders assailed.

WHEREFORE, your petitioner asks this Honorable Court for an order or direction advancing the above entitled appeal on the docket of said Court for argument at the earliest particular date convenient to the Court.

Dated, September 27, 1922.

Yours, etc.,

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Appellant,
The City of New York,
Municipal Building, New York.

M. MALDWIN FERTIG,
HARRY HERTZOFF,
Of counsel.

FILED
FEB 20 1923
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

October Term, 1922.

No. 588

THE CITY OF NEW YORK,
Appellant,

CHARLES D. NEWTON, as Attorney General of the State of New York, *et al.*,
Defendants,

against

NEW YORK TELEPHONE COMPANY,
Appellee.

Appeal From the District Court of the United States for the Southern District of New York

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Solicitors for Appellee.

JOHN W. DAVIS,
of Counsel.

IN THE

Supreme Court of the United States

October Term, 1922.

THE CITY OF NEW YORK, *Appellant,* CHARLES D. NEWTON, as Attorney General of the State of New York, *et al.*, *Defendants,* *against* NEW YORK TELEPHONE COMPANY, *Appellee.*	**No. 588**

Comes now the appellee, New York Telephone Company, and moves this Court to dismiss the appeal in this case on the ground that the order appealed from is not of that final character which furnishes the basis for an appeal and that the application to intervene was addressed to the discretion of the Court below; or, if the appeal shall not be dismissed for these reasons, that the decree of the District Court be affirmed on the ground that the District Court committed no error in denying the appellant's motion to intervene.

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Solicitors for Appellee.

JOHN W. DAVIS,
of Counsel.

To the City of New York, Appellant, and its Counsel, John P. O'Brien, Corporation Counsel for the City of New York:

PLEASE TAKE NOTICE that on Monday, the 8th day of January, 1923, at the hour of noon or as soon thereafter as counsel may be heard, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of appellant's brief in support of said motion.

Dated, New York, N. Y., December 14, 1922.

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Solicitors for Appellee.

JOHN W. DAVIS,
of Counsel.

IN THE

Supreme Court of the United States

October Term, 1922.

THE CITY OF NEW YORK,
Appellant,

CHARLES D. NEWTON, as Attorney General of the State of New York, *et al.*,
Defendants,

against

NEW YORK TELEPHONE COMPANY,
Appellee.

No. 588

BRIEF FOR APPELLEE ON MOTION TO DISMISS OR AFFIRM.

On March 29th, 1922, the New York Telephone Company, appellee herein, filed its bill in the District Court of the United States for the Southern District of New York against the several members of the New York Public Service Commission, the counsel of the said commission and the Attorney General of the State of New York, seeking to restrain the defendants from putting into effect two orders of the said Public Service Commission entered on March 3rd, 1922, on the ground that such orders, if made effective, would deprive the appellee of its property without due process of law in violation of the Constitution of the United States. On April 7, 1922, the appellant herein moved the Court for an order joining it as a party defendant to the cause. This motion was denied by an order entered on July 29, 1922, and

it is from that order that the appellant brings this appeal (Record, pp. 112, 113). This appeal is entirely distinct from the main proceeding, which is No. 542 of this term, an appeal by the defendants from an order granting an interlocutory injunction.

Of the two orders of the Public Service Commission of March 3, 1922, which the appellee attacks as confiscatory, one relates only to the exchange telephone rates in the City of New York, while the other is state-wide in effect. The latter order, however, prescribes rates for the City of New York by incorporating the former order therein as a part thereof. The City of New York bases its right to intervene upon Equity Rules 37 and 38.

I.

Not only is the order appealed from not of that final character which furnishes the basis for an appeal, but the application to intervene was addressed to the discretion of the District Court; consequently, this appeal should be dismissed.

The order appealed from is not a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert its rights in any other appropriate form of proceeding. The order, therefore, lacks the finality which is necessary to support an appeal, and it can not be reviewed inasmuch as it merely involves an exercise of the discretionary powers of the trial court.

In re Engelhard, 231 U. S., 646;
Ex Parte Leaf Tobacco Board of Trade, 222 U. S., 578;
Credits Commutation Company v. *U. S.*, 177 U. S., 311, 317;

Guion v. *Liverpool, etc., Ins. Co.*, 109 U. S., 173;
Ex Parte Cutting, 94 U. S., 14;
Farmers, etc., Bank v. *Arizona, etc., Association* (C. C. A.), 220 Fed., 1;
Swift v. *Black Panther Oil & Gas Co.* (C. C. A.), 244 Fed., 20, 30;
Western Union Tel. Co. v. *U. S., etc., Co.* (C. C. A.), 221 Fed., 545, 551;
U. S. v. *Philips* (C. C. A.), 107 Fed., 824.

The *Engelhard* case is directly in point. There the charges of the Cumberland Telephone Company were in litigation; one of the subscribers petitioned to intervene. The District Court denied the petition and this Court dismissed the appeal on the ground that such a denial was in the proper exercise of the Court's discretion. True, the City of Louisville was a party defendant in that case, just as the New York Public Service Commission is here, for the order in suit was *a City Ordinance prescribing rates*. In the instant case, however, the City of New York is in a position similar, not to the City of Louisville, but to Engelhard, the intervening petitioner.

The fact that the City of New York is a municipality and has attempted to assume the self-appointed duty of protecting the interests of its citizens in this rate litigation, does not confer upon the appellant an absolute right to intervene; the application rests entirely within the discretion of the trial court.

Consolidated Gas Company v. *Newton*, 256 Fed., 238 (affirmed 260 Fed., 1022 and remanded for dismissal 253 U. S., 219);
Morrell v. *Brooklyn Borough Gas Company*, 231 N. Y., 405;
City of New York v. *Citizens Water Supply Co.*, 191 N. Y. S., 430 (Appellate Division, Second Department).

II.

Even if the order appealed from should be considered a final order, the decision of the District Court denying the appellant's motion to intervene should be affirmed.

The City of New York is neither a necessary nor a proper party to this litigation. The issue presented by the bill of complaint is that the orders of the Public Service Commission of New York are void as in violation of the appellant's rights under the Constitution of the United States. Only a person, corporation or officer who is in some way charged with the duty of putting the rates prescribed by such orders into effect is a necessary or proper party. The persons who are so charged, in so far as the Commission's orders of March 3, 1922, are concerned, are the members of the State Commission, the counsel thereof, and the Attorney General of New York. These are joined as defendants. The City of New York is a complete stranger to this controversy.

The City of New York has no right or duty to represent any class of its citizens in a matter effecting their rights as individuals. This has been conclusively established in the recent gas rate litigation both in the Federal and State courts.

Consolidated Gas Company v. *Newton (supra);*
Morrell v. *Brooklyn Borough Gas Company (supra);*
City of New York v. *Citizens Water Supply Co. (supra).*

Individual telephone subscribers in New York City as well as throughout the State are amply protected by the presence in the suit as parties defendant of the Pub-

lic Service Commission, its counsel and the Attorney General of the State of New York. These are the persons designated by law to protect their rights. Under Article I, Section 12, of the Pubic Service Commission Law of the State of New York, it is made the duty of counsel to the Commission

> "to represent and appear for the People of the State of New York and the Commission in all actions and proceedings involving any question under this chapter, or within the jurisdiction of the Commission under the Railroad Law, or under or in reference to any act or order of the Commission, and, if directed to do so by the Commission, to intervene, if possible, in any action or proceeding in which any such question is involved";

while, by way of further assurance, Chapter 15 of the Laws of 1922 of the State of New York specifically directs that

> "The Attorney General shall appear for the People of the State, and take such steps as may be necessary to protect the interests of the public, in the proceeding heretofore instituted by the Public Service Commission and entitled 'In the Matter of the hearing on motion of the Commission, as to rates, charges and rentals, and the regulations and practices effecting the rates, charges and rentals of the New York Telephone Company.' For such purpose, he may employ special deputies, experts and other assistants, and incur such other expenses as he may find necessary, within the amount appropriated by this act."

The proceedings referred to in this statute are those which gave rise to the state-wide orders of March 3, 1922. Prior to the making of such orders the Attorney General had duly appeared on behalf of the People of the State of New York, *including all its municipalities.* The State of New York having thus determined who shall represent the People of the State of New York and the various sub-

divisions thereof in this telephone rate litigation, the City of New York, which is merely a political subdivision of the State, has no right to disapprove of counsel selected by the State and to insist that it shall be represented by its Corporation Counsel instead of the Attorney General.

Nor has the City of New York any legal interest in the controversy within the meaning of Equity Rule 37. To establish its right to intervene on this ground, the appellant points to the fact that it is the largest individual telephone subscriber in New York City. The fact is, however, that the appellant has not even a financial interest in the outcome of these proceedings. From 1905 to 1921, both inclusive, the City of New York, not by virtue of any statute, regulation or order, but under private agreement with the appellee, has paid a rate 25 per cent. below the general rate to subscribers. For the current year (1922) the appellee has made the City of New York a similar offer, namely, a discount of 25 per cent. from the existing rates charged to the public generally, and the City has not in any way indicated that it intends to refuse such offer and pay the full rates (Record, pp. 108-111). The reduction which the appellee has attacked as confiscatory is a reduction of 5 per cent. below the existing rates. Whatever may be the outcome of the present litigation, therefore, the City will be able to obtain a rate at least 20 per cent. less than the rate generally in effect, a rate consequently much below what the State Commission or the Courts may ultimately find to be reasonable.

But even in the event that the City could show a financial interest in this litigation, it would not have such a legal interest as to give it the right to intervene. If such a right existed under the provisions of Rule 37, then any or all of the one million or more subscribers of the New York Telephone Company throughout New York State,

and each of the other cities and municipalities in that State, might with equal right make demand to be joined as a party to the proceedings. Obviously such a condition of affairs could lead only to the utmost confusion and delay. Rule 37 cannot be considered as counterbalancing such a condition. From the very nature of the case, the alleged "right" to intervene must lie within the discretion of the trial court. There is nothing in the record to show that this discretion was abused.

CONCLUSION.

It is respectfully submitted that this appeal should be dismissed, or, in the alternative, that the decree appealed from should be affirmed.

Dated, New York, N. Y., December 14, 1922.

Respectfully submitted,

CHARLES T. RUSSELL,
STETSON, JENNINGS & RUSSELL,
Solicitors for Appellee.

JOHN W. DAVIS,
of Counsel.

CITY OF NEW YORK *v.* NEW YORK TELEPHONE COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 588. Argued February 21, 23, 1923.—Decided March 12, 1923.

1. In a suit to enjoin enforcement of orders of a state commission respecting telephone rates, upon the ground that the rates are confiscatory, a city with no control over such rates but interested only indirectly as a subscriber is not a necessary party. P. 315. *In re Engelhard & Sons Co.*, 231 U. S. 646.

2. In such case, where the interests of the city were fully represented through the commission and other officials made parties, application of the city to become a party also was addressed to the District Court's discretion, and its order denying the application is not final and appealable. P. 316.

Appeal dismissed.

APPEAL from an order of the District Court denying appellant's application to be made a party defendant in an injunction suit.

Mr. M. Maldwin Fertig, with whom *Mr. George P. Nicholson* and *Mr. Harry Hertzoff* were on the brief, for appellant.

The order appealed from is a final order. *Gay* v. *Hudson River Co.,* 184 Fed. 689; *Matter of Farmers' Loan & Trust Co.,* 129 U. S. 206; *Brush Electric Co.* v. *Electric Imp. Co.,* 51 Fed. 557; *La Bourgogne,* 210 U. S. 95; *Heike* v. *United States,* 217 U. S. 423.

The order appealed from impaired a substantial right of the City and, therefore, it is a final order. *Central Trust Co.* v. *United States Light & Heating Co.,* 233 Fed. 420; *Odell* v. *Batterman,* 223 Fed. 292; *Gas & Electric Securities Co.* v. *Manhattan & Queens Traction Co.,* 266 Fed. 625.

Abuse of discretionary power is reviewable by this Court.

Mr. John W. Davis, with whom *Mr. Charles T. Russell* was on the brief, for appellee.

Not only is the order appealed from not of that final character which furnishes the basis for an appeal, but the application to intervene was addressed to the discretion of the District Court; consequently, this appeal should be dismissed. *In re Engelhard & Sons Co.,* 231 U. S. 646; *Ex Parte Leaf Tobacco Board of Trade,* 222 U. S. 578; *Credits Commutation Co.* v. *United States,* 177 U. S. 311; *Guion* v. *Liverpool Ins. Co.,* 109 U. S. 173; *Ex parte Cut-*

ting, 94 U. S. 14; *Farmers Bank* v. *Arizona Association*, 220 Fed. 1; *Swift* v. *Black Panther Oil Co.*, 244 Fed. 20; *Western Union Tel. Co.* v. *United States, etc., Co.*, 221 Fed. 545; *United States* v. *Philips*, 107 Fed. 824.

The fact that the City of New York is a municipality and has attempted to assume the self-appointed duty of protecting the interests of its citizens in this rate litigation, does not confer upon the appellant an absolute right to intervene; the application rests entirely within the discretion of the trial court.

Even if the order appealed from should be considered a final order, the decision of the District Court denying the appellant's motion to intervene should be affirmed.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The New York Telephone Company, the appellee herein, filed its bill in the District Court against the members of the New York Public Service Commission, the counsel of the Commission and the Attorney General of the State, asking an injunction against the enforcement of two orders of the Public Service Commission as to telephone rates, one as to rates in the City of New York and the other as to those in the State of New York, outside of the city, which it alleged to be confiscatory of its property and in violation of the Fourteenth Amendment. Thereafter the City of New York moved the court for an order making it a party defendant in the cause. This order the District Court denied. Thereafter an interlocutory injunction against the orders was granted and an appeal, No. 542, is pending here and has been argued but not decided. This is a separate appeal from the order refusing the application of the City to be made a party defendant.

Under Article 1, § 12, of the Public Service Commissions Law of the State of New York, it is made the duty of

counsel to the Commission "to represent and appear for the people of the state of New York and the commission in all actions and proceedings involving any question under this chapter, or within the jurisdiction of the commission under the railroad law, or under or in reference to any act or order of the commission, and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved."

Chapter 15 of the Laws of 1922 of the State directs that:

"The attorney general shall appear for the people of the state, and take such steps as may be necessary to protect the interests of the public, in the proceeding heretofore instituted by the public service commission and entitled 'In the matter of the hearing on motion of the commission, as to rates, charges and rentals, and the regulations and practices affecting rates, charges and rentals of the New York Telephone Company.' For such purpose, he may employ special deputies, experts and other assistants, and incur such other expenses as he may find necessary, within the amount appropriated by this act."

The necessary defendant in the suit to enjoin the orders lowering rates was the Public Service Commission whose orders they were. In addition the counsel of the Commission and the Attorney General were made parties defendant under the legislation above recited. The City of New York has no control over the rates. Its only interest in them is as a subscriber, and even as such its interest in the general rates is not direct because its own rates are settled by a special contract. Under such circumstances, the City is certainly not a necessary party.

In re Engelhard & Sons Co., 231 U. S. 646, an action had been brought against the City of Louisville to restrain the enforcement of an ordinance prescribing tele-

phone rates. One of the subscribers filed a petition in the District Court asking to be made a party defendant. This was denied and the petitioner sought in this Court a mandamus to compel the District Judge to grant the petition. It was pressed upon the Court that petitioner had a common interest with other subscribers in the rates under discussion and that under Equity Rule No. 38 when the question is one of common or general interest and it is impracticable to bring them all before the court, one may sue or defend for all. This Court held that the City was the proper defendant in the suit as the representative of all interested. We said:

"It is the universal practice, sustained by authority, that the only mode of judicial relief against unreasonable rates is by suit against the governmental authority which established them or is charged with the duty of enforcing them."

There is nothing in this case to show that the Public Commission will not fully and properly represent the subscribers resident in New York City. Indeed it was said at the bar that the City and the Public Commission and the Attorney General were coöperating in every way in the defense of the suit. It was completely within the discretion of the District Court to refuse to allow the City to become a defendant when its interests and those of its residents were fully represented under the law and protected by those who had been made defendants. There is nothing to show that the refusal complained of was an abuse of discretion. This same controversy arose in the case of the *City of New York* v. *Consolidated Gas Co.*, 253 U. S. 219, and the same conclusion was reached. Indeed it was there said that an order like the one here objected to was not of such a final character as to furnish the basis of an appeal, citing *Ex parte Cutting*, 94 U. S. 14, 22; *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 315; *Ex parte Leaf Tobacco Board of Trade*,

222 U. S. 578, 581. These cases show that exceptional circumstances may make an order denying intervention in a suit a final and appealable order, but the present is not one of them.

Our conclusion is that this appeal should be

Dismissed.